University of London

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# REPORTS

FROM

# COMMITTEES:

*SEVEN VOLUMES.*

—(2.)—

ECCLESIASTICAL DILAPIDATIONS ACTS;
ECCLESIASTICAL OFFICES AND FEES;
EMPLOYERS LIABILITY FOR INJURIES TO THEIR SERVANTS.

Session

8 *February* —— 15 *August* 1876.

VOL. IX.

1876.

# REPORTS FROM COMMITTEES:

## 1876.

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*SEVEN VOLUMES:—CONTENTS OF THE*

SECOND VOLUME.

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# REPORT

FROM THE

SELECT COMMITTEE

ON

# ECCLESIASTICAL DILAPIDATIONS ACTS;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

AND APPENDIX.

*Ordered, by* The House of Commons, *to be Printed,*
1 *June* 1876.

258.

*Tuesday*, 21*st March* 1876.

*Ordered*, THAT a Select Committee be appointed "to inquire into the operation of the Ecclesiastical Dilapidations Acts of 1871 and 1872."

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*Monday*, 27*th March* 1876.

Committee nominated of—

| | |
|---|---|
| Mr. Walter. | Mr. Knatchbull-Hugessen. |
| Mr. Birley. | Mr. Monk. |
| Lord George Cavendish. | Mr. Cowper-Temple. |
| Mr. Dodds. | Mr. Wait. |
| Mr. Forester. | Mr. Frederick Walpole. |
| Mr. Freshfield. | Sir Sydney Waterlow. |
| Mr. Gregory. | Mr. Goldney. |
| Mr. Beresford Hope. | |

*Ordered*, THAT the Committee have power to send for Persons, Papers, and Records.

*Ordered*, THAT Five be the Quorum of the Committee.

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# REPORT.

THE SELECT COMMITTEE appointed to inquire into the operation of the ECCLESIASTICAL DILAPIDATIONS ACTS of 1871 and 1872;——HAVE considered the matters to them referred, and have agreed to the following REPORT:—

1. THE Law of Ecclesiastical Dilapidations, previous to the passing of the Act of 1871, was generally ascertained and defined. The Courts of Common Law had laid down, in certain leading decisions, the general principles which govern the law of dilapidations, and regulated the amount chargeable on a vacancy against the late incumbent, or his representatives.

2. In practice the arrangement rested entirely between the incoming and the late incumbent, or his executors, and the decisions of the courts guided the surveyors; or others employed, as to the work to be done, and the amount to be assessed. Neither the patron nor ordinary interfered, or asserted any rights to interfere. If either party was dissatisfied as to the amount, or no agreement was come to, the claim could be enforced or resisted in the ordinary way by an action at law; but practically, if no question of law arose, and the surveyors or parties called in differed, it was left to an umpire to determine the point in difference, in the same way as the amount of dilapidations is now ascertained between the representatives of tenants for life and their successors, or between landlords and lessees on the termination of a lease.

3. It is in evidence before your Committee that there were only 10 cases litigated between the years 1840 and 1860, but at the same time there was no security that the amount paid by an outgoing incumbent, or the representatives of a deceased incumbent, was expended on the benefice, nor was there any practical means of enforcing such expenditure. Q. 1546.

4. The Act of 1871 made an entire change by taking away all rights of the incumbents to interfere, and vesting extraordinary powers in a surveyor or surveyors to be appointed for each diocese.

5. The appointment of a diocesan surveyor under the Act is vested in the archdeacons and rural deans, subject to the approval of the Bishop of each diocese, who also has the power of removing him for neglect of duty, or unfitness for his office, after cause shown to the contrary. The surveyor determines absolutely what works are needed, what he estimates to be the cost, and within what time such works are to be executed. In arriving at this determination, according to the evidence given before your Committee, the surveyor considers himself precluded from taking any account of the condition in which the outgoing incumbent may have received the premises, or the amount he may have expended in repairs and improvements.

6. Neither the incoming nor the outgoing incumbent has any right under the Act to appear before the surveyor to state his view of the case, or to give any explanation, or to represent any special circumstances, and the report of

the surveyor, unless objected to within a month, becomes final and absolute, both as regards fact and law. If an objection is made within the month, then it is left to the Bishop to act, if he thinks fit, and, at the expense of the party objecting, to direct a second report to be made by another surveyor, or to take the opinion of counsel on any question of law; but whether the Bishop does this or not, he has vested in him the absolute power of confirming or modifying the original report, and determining the amount to be paid.

7. If the incumbent refuses or neglects to execute the repairs in the manner, and within the time prescribed, or neglects to pay to the Governors of Queen Anne's Bounty, the amount stated in the order of the surveyor as the cost of the repairs, the Bishop is empowered to issue a sequestration.

8. On the avoidance of a benefice the amount assessed by the surveyor is made a debt due from the late to the new incumbent, but whether the new incumbent recovers it or not, the Act imposes on him an obligation to pay out of his own pocket the whole amount within six months to the Governors of Queen Anne's Bounty, and if not so paid, renders him liable to have his benefice sequestrated.

9. The charges of the surveyor for his inspections, reports, and certificates, and the fees of the Bishop's secretary and the Bishop's registrar, are also to be paid by the new incumbent, and these charges and fees are by the Act made debts due to the surveyor, secretary, and registrar respectively by him, and may be recovered as such by proceedings at law or in equity.

10. Immediately after passing the Act its provisions were brought into operation by the appointment of a surveyor or surveyors for each diocese, and by settling the fees to be paid by the incumbents. A list of the surveyors appointed and the tables of fees in each diocese appear in the Appendix to this Report. In the 27 dioceses—12 have appointed only one surveyor, 7 have appointed 2, 7 have appointed 3, and 1, viz., Exeter, has appointed 6 surveyors.

11. The scales of charges and fees in the different dioceses vary materially. As regards the surveyor, in addition to specific charges for time, he is, in some dioceses, to be paid a per-centage on the amount of dilapidations, varying
Q. 2508. from $1\frac{1}{2}$ to 3 per cent. without superintendence, and if required to superintend, in nearly all the dioceses 5 per cent. The payments as regards inspections, reports, and certificates are made either according to the value of the benefice, ranging from 10 guineas downwards, or at rates varying from 7 guineas to 2 guineas, with travelling expenses in addition. In the large diocese of Winchester the surveyor, who lives in London, stated in his evidence that when he went out of London and had to make more than one survey on the same journey, he divided the travelling expenses amongst the several incumbents.

12. The Scale of Fees payable to the Archbishop's and Bishop's secretaries, and to the registrars of the different dioceses, also vary materially, but are made to attach to almost every proceeding under the Act, and to every case of vacancy or inspection, and even in many dioceses to the fire insurance receipts which the incumbent is required to produce annually at the Bishop's or Archdeacon's visitation.

13. An Act (35 & 36 Vict. c. 96) was passed in 1872, authorising the Lord Chancellor, the two Archbishops, and their Vicars General, with the consent of the Treasury, to revise these fees, and place them on a uniform scale, but that power has not been acted on, and the time for exercising it has now elapsed.

14. On passing the Act of 1871, one of the boons held out to the clergy was, that the incumbents, with the consent of the Bishop and patron, might borrow
Q. 53. from the Governors of Queen Anne's Bounty "The whole or any part of the sum required by the report of the surveyor as the cost of the works, and also
Sec. 15. such sums as the Governors should think fit in respect of costs and expenses;" another was that an incumbent might at any time put himself under the Act, and on obtaining a certificate from the surveyor that the necessary repairs had been completed, he should be exempt for a period of five years from any further claim; but, in effect, the Governors of Queen Anne's Bounty decline to grant loans

loans to incumbents of advanced age, or to incumbents of small livings, the latter on the ground of insufficient security for repayment. As regards the five years' exemption, the high requirements of the surveyor as to the nature and extent of the repairs necessary, before giving a certificate, have so alarmed the clergy as generally to deter them from placing themselves under the operation of this provision.

15. The formal request for inspection having been once made by an incumbent brings the Act in full force upon him, and there is no provision for staying the proceedings.

16. The complaints of the clergy with respect to this Act are,—

1. The burden cast by it upon incumbents in the case of dilapidations arising from progressive decay, and aggravated in many cases by the state of excessive dilapidation into which parsonages had fallen under the old system, and for which they, or their executors, are now rendered liable.

2. That the whole amount assessed is required to be paid at once, instead of the outlay on the structural and permanent portion of the buildings being spread over a certain number of years.

3. The absence of any practical appeal or redress against the decision of the surveyor.

4. The limited number of surveyors for each diocese.

5. The absence of any direct voice in the election of the surveyor by the general body of the clergy.

6. The amount of fees and charges of the surveyors, secretaries, and registrars which vary in many dioceses.

7. The want of a definition of dilapidations, and of a distinction between landlords and tenants' repairs.

8. The difficulty of obtaining a final certificate.

17. There are about 10,500 benefices with residences.

18. Since the passing of the Act, about 2,500 cases have come under its operation, and of these, in 262 cases the amount of dilapidations was under 20 *l.*, averaging 11 *l.* 15 *s.* 4 *d.* each; and 469 cases under 50 *l.*, averaging 34 *l.* 18 *s.* 3 *d.* each. The average amount of fees and charges on each survey and report being about 12 *l.* From 1871 to the end of 1875, the amount received by Queen Anne's Bounty for dilapidation money by direct receipt, was 290,624 *l.*, and during the same period the governors lent to the incumbents for repairs 31,928 *l.* in addition, making an aggregate sum of 322,553 *l.* carried to the credit of the dilapidation account; of that amount, 103,668 *l.* remains in the hands of the governors, which cannot be paid out until they get the surveyor's final certificate; and in carrying the Act into execution, it is estimated there must be always a large sum, exceeding 100,000 *l.*, in the Governors' hands. Q. 2783–4–5. Q. 114, 115, 117.

19. The Governors of Queen Anne's Bounty Board, as regards the Statute of 1871, act simply as bankers. They are receivers of the money and pay it out when directed, but have no controlling power; they are unable to pay out any sum except on the surveyor's certificate, and these certificates are frequently withheld from disputes as to fees and charges, and are delayed sometimes on other grounds. Q. 2809, 2810.

20. The Act applies to the residences of the clergy and to the chancels of churches, except when such chancels are vested in lay rectors or lay impropriators.

21. The suggestions laid before your Committee for remedying the complaints, have been of a two-fold character:—

If the present Act is maintained,—

(*a.*) To appoint a larger number of approved surveyors in each diocese, from whom the two parties, the out-going and in-coming incumbents may select one, or each nominate his own surveyor, thus putting 405.

the parochial clergy in the same position as the heads of the Church are in, under the Act.

(*b.*) To make the Archdeacon, instead of the Bishop, the ecclesiastical officer for putting the Act into operation.

(*c.*) To give a power of appeal to some competent local authority.

(*d.*) To dispense with all fees to the Bishop's secretary and registrar.

(*e.*) To lay down a definite principle of assessment for dilapidations; to provide for loans of money to incumbents of small livings; to extend the periods allowed for repayment; and to facilitate the arrangements for obtaining a final certificate.

(*f.*) To give greater powers to Queen Anne's Bounty Board for advances in cases of structural dilapidations and small livings, and to dispense with the patron's assent in cases of loan.

If the present Act is not maintained,—

The suggestion made by the Bishop of Peterborough, and approved of in effect by other witnesses, is "to get rid of the present system of dilapidations "altogether, and to substitute for it a fixed annual charge on each benefice, "payable either to a diocesan dilapidation board, or to Queen Anne's Bounty Q. 1360. "Board, and that such board should build, repair, and insure glebe-houses "and premises, the clergyman being, in return for his annual payment, free "from all charges now known as dilapidations." That there should be a periodical survey of all glebe-houses; that secretaries' and registrars' fees should be abolished, and the business now done by them be transacted by a clerk at a fixed salary.

22. Your Committee are of opinion that the operation of the present Act has, in many respects, failed to accomplish the objects for which it was enacted. That it has provided no remedy for the most important complaint under the old law, namely, the inability of the representatives of deceased incumbents to meet the amount assessed for dilapidations, but has cast upon new incumbents an obligation to pay over the amount, and attached also to them a liability for fees previously unknown to the law, and has deprived the clergy of all power of acting in their own matters, of choosing their own advisers, and of all practical appeal against the official surveyor appointed under the Act. Your Committee are of opinion that some Legislative alteration is needed to remove the well-grounded complaints of a large body of the clergy.

23. Your Committee are of opinion that the machinery of the Act is cumbersome and expensive, and that the requirements of the surveyors under the Acts have, in many cases, exceeded the legal definition of ecclesiastical dilapidations. If the principle of the Act is maintained an increased number of approved surveyors should be appointed, from whom the clergy may select, and that there should be a right of appeal, on any question of law, in a simple form, to such local tribunal as Parliament may direct, and that provision should be made for extending the granting powers of the Governors of Queen Anne's Bounty, and the arrangements for repayment to meet the cases of small livings.

24. Your Committee, however, are of opinion that it would be much more desirable and advantageous to carry out, if possible, the view before expressed of meeting the whole question by a system of annual contribution from each benefice, proportioned to the state of repair and value of the buildings by a periodical survey which may be conducted by a surveyor at a salary, and that the management should be remitted to Queen Anne's Bounty Board, which at present has an account opened with nearly every benefice in the king-Q. 2832. dom, and which may be authorised to relieve small livings in whole or in part Q. 2846. from the cost of dilapidations as a legitimate application of their funds.

25. The Treasurer of Queen Anne's Bounty anticipates no difficulty in carrying this out from want of means, the principles being agreed upon; and states that there would be no serious additional trouble or expense to the Board.

26. Your

26. Your Committee have purposely abstained from going into and embodying in their Report the details of any plan for carrying out this proposal; but they consider that under the management of Queen Anne's Bounty Board, with extended powers, and the adoption of certain of the suggestions contained in the evidence of the witnesses examined before them, such a plan could be effectively and efficiently brought into operation, and that, if so, it would relieve the clergy from great hardships and grievances, and would at the same time ensure the due and permanent repair and sustentation of parsonages, and all other ecclesiastical property vested in incumbents, at a comparatively moderate cost.

27. Your Committee are strongly of opinion that such amendment of the law should take place with the least possible delay.

1 *June* 1876.

# PROCEEDINGS OF THE COMMITTEE.

## *Wednesday, 5th April* 1876.

MEMBERS PRESENT:

| | |
|---|---|
| Mr. Goldney. | Mr. Cowper-Temple. |
| Mr. Dodds. | Mr. Beresford Hope. |
| Mr. Gregory. | Mr. Forester. |
| Sir Sydney Waterlow. | Mr. Freshfield. |
| Mr. Walter. | Mr. Wait. |
| Mr. Monk. | |

Mr. GOLDNEY was called to the Chair.

The Committee deliberated.

[Adjourned till To-morrow, at Twelve o'clock.

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## *Thursday, 6th April* 1876.

MEMBERS PRESENT:

Mr. GOLDNEY in the Chair.

| | |
|---|---|
| Mr. Birley. | Lord George Cavendish. |
| Mr. Monk. | Mr. Gregory. |
| Mr. Freshfield. | Mr. Forester. |
| Mr. Dodds. | Mr. Beresford Hope. |
| Mr. Walter. | Mr. Cowper-Temple. |
| Mr. Wait. | Sir Sydney Waterlow. |

Mr. *J. K. Aston,* the Rev. Canon *Williams,* and the Rev. *D. Mountfield,* were severally examined.

[Adjourned till Thursday, 27th April, at Twelve o'clock.

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## *Thursday, 27th April* 1876.

MEMBERS PRESENT:

Mr. GOLDNEY in the Chair.

| | |
|---|---|
| Mr. Birley. | Mr. Beresford Hope. |
| Mr. Forester. | Mr. Wait. |
| Sir Sydney Waterlow. | Mr. Walter. |
| Lord George Cavendish. | Mr. Gregory. |
| Mr. Dodds. | Mr. Cowper-Temple. |
| Mr. Monk. | |

The Rev. *W. Elliot,* the Rev. *Digby Wrangham,* and the Rev. *C. W. Simmons,* were severally examined.

[Adjourned till Monday next, at Twelve o'clock.

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## *Monday*, 1*st May* 1876.

MEMBERS PRESENT:

Mr. GOLDNEY in the Chair.

| | |
|---|---|
| Mr. Beresford Hope. | Mr. Walter. |
| Mr. Birley. | Lord George Cavendish. |
| Mr. Monk. | Mr. Wait. |
| Mr. Freshfield. | Mr. Cowper-Temple. |
| Mr. Forester. | Sir Sydney Waterlow. |

Messrs. *James Bull*, *E. Hodges*, *Charles Simmons*, the Rev. *James Ruston*, and the Rev. *Charles Astley*, were severally examined.

[Adjourned till Thursday next, at Twelve o'clock.

## *Thursday*, 4*th May* 1876.

MEMBERS PRESENT:

Mr. GOLDNEY in the Chair.

| | |
|---|---|
| Mr. Birley. | Lord George Cavendish. |
| Mr. Beresford Hope. | Mr. Wait. |
| Mr. Gregory. | Mr. Forester. |
| Mr. Walter. | Mr. Cowper-Temple. |
| Mr. Monk. | Mr. Dodds. |
| Mr. Freshfield. | |

The Lord Bishop of *Peterborough* (attending by permission of the House of Lords), the Rev. *Adolphus Waller*, Dr. *Tristram*, and Mr. *E. Bayley*, were severally examined.

[Adjourned till Monday next, at Twelve o'clock.

## *Monday*, 8*th May* 1876.

MEMBERS PRESENT:

Mr. GOLDNEY in the Chair.

| | |
|---|---|
| Mr. Dodds. | Mr. Monk. |
| Lord George Cavendish. | Mr. Walter. |
| Mr. Freshfield. | Mr. Wait. |
| Mr. Beresford Hope. | |

The Lord Archbishop of *York* (attending by permission of the House of Lords) and Mr. *E. Hippisley* were severally examined.

Adjourned till Thursday next, at Twelve o'clock.

## *Thursday*, 11*th May* 1876.

MEMBERS PRESENT:

Mr. GOLDNEY in the Chair.

| | |
|---|---|
| Mr. Birley. | Mr. Freshfield. |
| Mr. Knatchbull-Hugessen. | Lord George Cavendish. |
| Mr. Walter. | Mr. Monk. |
| Mr. Wait. | Mr. Gregory. |

Mr. *G. M. Hills*, Mr. *A. R. Barker*, and the Rev. *J. B. Phillips*, were severally examined.

[Adjourned till Thursday next, at One o'clock.

## *Thursday*, 18*th May* 1876.

MEMBERS PRESENT:

Mr. GOLDNEY in the Chair.

| | |
|---|---|
| Lord George Cavendish. | Mr. Freshfield. |
| Mr. Birley. | Mr. Monk. |
| Mr. Gregory. | Mr. Wait. |
| Mr. Cowper-Temple. | Mr. Beresford Hope. |
| Mr. Forester. | |

The Committee deliberated.

Mr. *M'Lagan* (a Member of the House), the Rev. *M. Gibbs*, Mr. *G. M. Hills*, Mr. *F. Chancellor*, and Mr. *J. K. Aston*, were severally examined.

[Adjourned till Monday, 29th May, at One o'clock.

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## *Monday*, 29*th May* 1876.

MEMBERS PRESENT:

Mr. GOLDNEY in the Chair.

| | |
|---|---|
| Mr. Knatchbull-Hugessen. | Mr. Birley. |
| Mr. Monk. | Mr. Freshfield. |
| Mr. Walter. | Mr. Forester. |
| Lord George Cavendish. | Mr. Cowper-Temple. |
| Mr. Beresford Hope. | |

DRAFT REPORT proposed by the Chairman, read the first time, as follows:

"1. THE Law of Ecclesiastical Dilapidations, previous to the passing of the Act of 1871, was generally ascertained and defined. The Courts of Common Law had laid down, in certain leading decisions, the general principles as to the matters which came under the definition of dilapidations, and which regulated the amount which could be charged against the late incumbent, or his representatives, on a vacancy.

"2. In practice the arrangement rested entirely between the incoming incumbent and the late incumbent, or his executors, and the decisions of the courts guided the surveyors, or others employed, as to the work to be done, and the value to be assessed. Neither the patron nor ordinary interfered, or asserted any rights to interfere. If either party was dissatisfied as to the amount, or no agreement was come to, the claim could be enforced or resisted in the ordinary way by an action at law; but practically, if no question of law arose, and the surveyors or parties called in differed, it was left to an umpire to determine the point in difference, in the same way as the amount of dilapidations is now ascertained between the representatives of tenants for life and their successors, or between landlords and lessees on the termination of a lease.

"3. Very few cases were litigated, and it is in evidence before your Committee that there were only 10 cases litigated between the years 1840 and 1860.

"4. The Act of 1871 made an entire change by taking away all rights of the incumbents to interfere, and vesting extraordinary powers in a surveyor or surveyors to be appointed for each diocese.

"5. The appointment of a diocesan surveyor under the Act, although nominally in the archdeacons and rural deans, practically rests with the Bishop of each diocese, and the surveyor determines absolutely what works are needed, what he estimates to be the cost, and within what time such works are to be executed.

"6. Neither the in-coming nor the out-going incumbent have any right under the Act to appear before the surveyor to state their view of the case, or give any explanation, or to state any special circumstances, and the report of the surveyor, unless objected to within a month, becomes final and absolute, both as regards fact and law. If an objection is made within the month, then it is left to the Bishop to act, if he thinks fit, and, at the expense of the party objecting, to direct a second report to be made by another surveyor, or to take the opinion of counsel on any question of law; but whether the Bishop does this or not he has vested in him the absolute power of confirming or modifying the original report, as he thinks fit, and determining the amount to be paid.

"7. If

"7. If the incumbent refuses or neglects to pay the money, or execute the repairs in the manner, and within the time prescribed, the bishop is to issue a sequestration.

"8. On the avoidance of a benefice, the amount assessed by the surveyor is made a debt due from the late to the new incumbent, but whether the new incumbent recovers it or not, it imposes on the new incumbent, who has had nothing to do with the dilapidations, an obligation to pay out of his own pocket the whole amount within six months to the Governors of Queen Anne's Bounty, and if not so paid, renders him liable to sequestration.

"9. The charges of the surveyor for his inspections, reports, and certificates, and the fees of the bishop's secretary and the bishop's registrar, are also to be paid by the new incumbent, and these charges and fees are by the Act made debts due to the surveyor, secretary, and registrar respectively by him, and may be recovered as such by proceedings at law or in equity.

"10. Immediately after passing the Act its provisions were brought into operation by the appointment of a surveyor or surveyors for each diocese, and by settling the fees to be paid by the incumbents. A list of the surveyors appointed and the tables of fees in each diocese appear in the Appendix to this Report. In the 27 dioceses—12 have appointed only one surveyor, 7 have appointed 2, 7 have appointed 3, and 1, viz., Exeter, has appointed 6 surveyors.

"11. The scales of charges and fees in the different dioceses vary materially. As regards the surveyor, in addition to specific charges for time, he is, in some dioceses, to be paid a per-centage on the amount of dilapidations, varying from $1\frac{1}{2}$ to 3 per cent. without superintendence, and if required to superintend, in nearly all dioceses 5 per cent. The payments as regards inspections, reports, and certificates are made either according to the value of the benefice, ranging from 10 *l.* 10 *s.* downwards, or at rates varying from 7 guineas to 2 guineas, with travelling expenses in addition. In the large diocese of Winchester the surveyor, who lives in London, stated in his evidence that when he went out of London and had to make a number of surveys at the same time, he divided the travelling expenses amongst the different incumbents.

"12. The scale of fees payable to the archbishops' and bishops' secretaries and to the registrars of the different dioceses, also vary materially, but are made to attach to every proceeding under the Act, and to every case of vacancy or inspection, and even to the fire insurance receipts, which the incumbent is required to produce annually at the bishop's or archdeacon's visitation.

"13. An Act was passed in 1872 requiring these fees to be put on a uniform scale, but it has not been complied with.

"14. On passing the Act of 1871 one of the boons held out to the clergy was, that the incumbents, with the consent of the bishop and patron, might borrow from the Governors of Queen Anne's Bounty 'The whole or any part of the sum required by the report of the surveyor as the cost of the works, and also such sums as the Governors should think fit in respect of costs and expenses; and that on a clergyman voluntarily putting himself under the Act, and obtaining a certificate from the surveyor that the necessary repairs had been completed, he should be exempt for a period of five years from any further claim;' but, in effect, the Governors of Queen Anne's Bounty decline to make advances to incumbents of long standing, and cannot advance to small livings, on the ground of insufficient security for repayment, and as regards the five years' exemption the very large views which surveyors have taken as to what ought to satisfy them before giving a certificate of the buildings attached to the benefice being in a fit state of repair, have so alarmed the clergy as to deter them from placing themselves under the operation of this provision. Q. 53. Sec. 15.

"15. The formal request for inspection having been once made by an incumbent brings the Act in full force upon him, and the Bishop of Peterborough, therefore, with a view of protecting the clergy in his diocese from the hardship of the arbitrary power of the surveyor, has suggested that they should get a surveyor to go in a friendly way first, and ascertain his views before committing themselves to a formal application.

"16. The complaints of the clergy are,—

"1. The burden upon existing incumbents in the case of dilapidations arising from ordinary wear and tear, or from progressive decay.

"2. That the whole amount assessed is required to be paid at once, instead of the outlay on the structural and permanent portion of the buildings being spread over a certain number of years.

"3. The absence of any practical appeal or redress against the arbitrary decision of the surveyor.

"4. The limited number of surveyors for each diocese.

"5. The absence of any voice in the election of the surveyor.

"6. The large amount of fees and charges of the surveyors, secretaries, and registrars.

"7. The want of a definition of dilapidations, and a distinction between two classes of repairs.

"17. There are about 10,500 benefices with residences.

Q. 2783-4-5. "18. Since the passing of the Act about 2,500 cases have come under its operation, and of these, in 262 cases, the amount of dilapidations was under 20 *l.*, averaging 11 *l.* 15 *s.* 4 *d.* each; and 469 cases under 50 *l.*, averaging 34 *l.* 18 *s.* 3 *d.* each. The average amount of fees and charges on each survey and report being about 12 *l.* From 1871 to the end of 1875, the amount received by Queen Anne's Bounty for dilapidation money by direct receipt, was 290,624 *l.*, and during the same period the Governors lent to the incumbents for repairs 31,928 *l.* in addition, making an aggregate sum of 322,553 *l.*

Q. 114, 115, 117. carried to the credit of the dilapidation account; of that amount 103,668 *l.* remains in the hands of the Governors, which cannot be paid out until they get the surveyor's final certificate, and in carrying the Act into execution, it is estimated there must be always a large sum, exceeding 100,000 *l.* in the Governors' hands.

"19. The Governors of Queen Anne's Bounty Board, as regards the Statute of 1871, consider themselves simply as bankers. They are receivers of the money, and pay it out

Q. 2809-2810. when directed, but have no controlling power; they are unable to pay out any sum except on the surveyor's certificate, and these certificates are frequently withheld from disputes as to fees and charges, and are delayed sometimes on other grounds.

"20. The Act applies to the residences of the clergy and to the chancels of the rectories but not to lay impropriators.

"21. The suggestions laid before your Committee for remedying the complaints, have been of a two-fold character:—

"If the present Act is maintained,—

405. "(*a.*) To appoint a much larger number of approved surveyors in each diocese, from whom the two parties, the out-going and in-coming incumbents may select one, or each nominate his own surveyor, thus putting the parochial clergy in the same position as the heads of the Church are in under the Act.

"(*b.*) To make the Archdeacon instead of the Bishop the ecclesiatical officer for putting the Act in operation.

"(*c.*) To give a power of appeal to some competent local authority.

"(*d.*) To define the two classes of dilapidations, and allow the certificate of the incumbent's surveyor of the repairs having been done, countersigned by the Archdeacon to be sufficient, and dispense altogether with fees to the Bishop's secretary and registrar.

"(*e.*) To give powers to Queen Anne's Bounty for advances in cases of structural dilapidations and small livings, and to dispense with the patron's assent in cases of loan.

"22. The other and more important suggestion, made by the Bishop of Peterborough, and approved of in effect by other witnesses, is to get rid of the present system of dilapidations altogether, and to substitute for it a fixed annual charge on each benefice, payable either to a diocesan dilapidation board, or to Queen Anne's Bounty Board, and that such board should build, repair, and insure glebe-houses, the clergyman being, in return for his annual payment, free from all charges now known as dilapidations. That there should be a periodical survey of all glebe-houses; that secretaries and registrars' fees should be abolished, and the business now done by them be transacted by a clerk at a fixed salary.

"23. Your Committee are of opinion that the operation of the present Act has, so far as it was intended for the benefit of the clergy, essentially failed. That it has provided no remedy for the most important complaint under the old law, namely, the inability of the representatives of deceased incumbents to meet the amount assessed for dilapidations, but has cast upon new incumbents an obligation to pay over the amount, and attached also to them a liability for fees previously unknown, and has deprived the clergy of all power of acting in their own matters of choosing their own advisers, and of all practical appeal against the official surveyor appointed under the Act. Your Committee are also of opinion that some legislative alteration is needed to remove the well-grounded complaints of a large body of the clergy.

"24. Your Committee are of opinion that the machinery of the Act is altogether too cumbersome and too expensive, and that if the principle of the Act is maintained, the details should be carried out under the direction of archdeacons and rural deans; that a large number of approved surveyors in each diocese should be appointed, from whom the clergy may select, with a right of appeal, on any question of law, in a simple form, to a county court judge, and that provision should be made for extending the granting powers of the Governors of Queen Anne's Bounty to meet the cases of small livings.

"25. Your Committee, however, are of opinion that it would be much more desirable and advantageous to carry out, if possible, the view before expressed of meeting the whole question by an annual contribution from each benefice, proportioned to the state of repair

repair and value of the buildings by a periodical survey which may be conducted by a diocesan surveyor at a salary, and that the management might safely be remitted to the Queen Anne's Bounty Board, who at present have an account opened with nearly every benefice in the kingdom, and who may be authorised to relieve small livings in whole or in part from the cost of dilapidations as a legitimate application of their funds. 2832. 2846.

"26. The Treasurer of Queen Anne's Bounty anticipates no difficulty in carrying this out from want of means, the principles being agreed upon; and states that there would be very little additional trouble or expense to the department if carried out by the Bounty Board, or by a committee appointed and instructed by that Board, the Board being its own insurer against fire, as regards all glebe houses and chancels.

"27. Your Committee have purposely abstained from going into and embodying in their Report the details of any plan for carrying out this proposal; but they consider that under the management of Queen Anne's Bounty Board, with extended powers, and the adoption of certain of the suggestions contained in the evidence of the witnesses examined before them, such a scheme could be effectively and efficiently brought into operation; and that, if so, it would relieve the clergy from great hardships and grievances, and would at the same time ensure the due and permanent repair and sustentation of parsonages, and all other ecclesiastical property vested in incumbents, at a comparatively moderate cost."

DRAFT REPORT proposed by the Chairman, read a second time, paragraph by paragraph.

Paragraphs 1—4, amended, and *agreed to.*

Paragraph 5.—Amendments made.—Amendment proposed, at the end of the paragraph, to add the words "or the value of the living"—(Mr. *Knatchbull-Hugessen*).—Question put, That those words be there added.—The Committee divided:

| Ayes, 3. | Noes, 7. |
|---|---|
| Mr. Knatchbull-Hugessen. | Mr. Walter. |
| Mr. Beresford Hope. | Mr. Monk. |
| Mr. Cowper-Temple. | Lord George Cavendish. |
| | Mr. Forester. |
| | Mr. Waite. |
| | Mr. Birley. |
| | Mr. Freshfield. |

Paragraph, as amended, *agreed to.*

Paragraphs 6—20, amended, and *agreed to.*

[Adjourned till Thursday next, at Twelve o'clock.

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*Thursday, 1st June* 1876.

MEMBERS PRESENT:

Mr. GOLDNEY in the Chair.

| | |
|---|---|
| Lord George Cavendish. | Mr. Walter. |
| Mr. Freshfield. | Mr. Monk. |
| Mr. Wait. | Mr. Beresford Hope. |
| Mr. Forester. | Mr. Birley. |
| Mr. Knatchbull-Hugessen. | Mr. Gregory. |

Paragraphs 21–23, amended, and *agreed to.*

Paragraph 24.—Amendments made.—Amendment proposed, in lines 5 and 6, to leave out the words "to a County Court Judge"—(Mr. *Knatchbull-Hugessen*).—Question put,

That the words proposed to be left out stand part of the paragraph.—The Committee divided:

| Ayes, 4. | Noes, 5. |
|---|---|
| Mr. Gregory. | Mr. Knatchbull-Hugessen. |
| Lord George Cavendish. | Mr. Walter. |
| Mr. Forester. | Mr. Monk. |
| Mr. Birley. | Mr. Beresford Hope. |
| | Mr. Wait. |

Other Amendments made.—Paragraph, as amended, *agreed to.*

Paragraph 25.—Amendment proposed, after the words "whole question by," in line 3, to insert the words "committing the repairs and reinstatement of ecclesiastical buildings to a board which should provide the money and recoup itself by"—(Mr. *Birley*).—Question put, That those words be there inserted.—The Committee divided:

| Aye, 1. | Noes, 7. |
|---|---|
| Mr. Birley. | Mr. Knatchbull-Hugessen. |
| | Mr. Walter. |
| | Mr. Gregory. |
| | Mr. Monk. |
| | Mr. Beresford Hope. |
| | Mr. Forester. |
| | Mr. Wait. |

Amendments made.—Paragraph, as amended, *agreed to.*

Paragraphs 26 and 27, amended, and *agreed to.*

A new paragraph added.

Question, That this Report, as amended, be the Report of the Committee to the House,—put, and *agreed to.*

*Ordered*, To Report, together with the Minutes of Evidence, and an Appendix.

## EXPENSES OF WITNESSES.

| NAME of WITNESS. | PROFESSION or CONDITION. | From whence Summoned. | Number of Days Absent from Home, under Orders of Committee. | Allowance during Absence from Home. | Expenses of Journey to London and Back. | TOTAL Expenses allowed to Witness. |
|---|---|---|---|---|---|---|
| | | | | £. s. d. | £. s. d. | £. s. d. |
| Williams, D. | Canon | St. Asaph | Three | 3 3 – | 3 7 – | 6 10 – |
| Mountfield, D. | Clergyman | Newport, Salop | Three | 3 3 – | 2 7 – | 5 10 – |
| Elliot, W. | ditto | Church Stretton | Three | 3 3 – | 2 12 – | 5 15 – |
| Wrangham, D. S. | ditto | Pontefract | Three | 3 3 – | 2 17 – | 6 – – |
| Simmons, C. W. | ditto | Broadway, Gloucester. | Three | 3 3 – | 1 10 – | 4 13 – |
| Simmons, C. J. | Solicitor | Wrington, Bristol. | Two | 4 4 – | 2 12 – | 6 16 – |
| Hodges, E. | ditto | Newport, Salop | Three | 6 6 – | 2 12 6 | 8 18 6 |
| Ruston, James | Clergyman | Lymington | Two | 2 2 – | 1 14 – | 3 16 – |
| | | ditto | Two | 2 2 – | 1 14 – | 3 16 – |
| Hebb, W. | Solicitor | Ross | Two | 4 4 – | 2 10 – | 6 14 – |
| Astley, Charles | Clergyman | Chatham | One | 1 1 – | – 10 – | 1 11 – |
| Hippisley, Edwin | Land Surveyor | Wells | Three | 6 6 – | 2 5 – | 8 11 – |
| Phillips, J. B. | Clergyman | Rossendale, Manchester. | Three | 3 3 – | 2 17 – | 6 – – |
| | | | TOTAL | £. | | 74 10 6 |

# MINUTES OF EVIDENCE.

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# MINUTES OF EVIDENCE.

*Thursday, 6th April* 1876.

MEMBERS PRESENT:

Lord George Cavendish.
Mr. Dodds.
Mr. Forester.
Mr. Freshfield.
Mr. Goldney.
Mr. Gregory.
Mr. Beresford Hope.
Mr. Knatchbull-Hugessen.
Mr. Monk.
Mr. Cowper-Temple.
Mr. Wait.
Mr. Walter.
Sir Sydney Waterlow.

GABRIEL GOLDNEY, Esq., IN THE CHAIR.

Mr. JOSEPH KEECH ASTON, called in; and Examined.

*Chairman.*

1. YOU are Secretary and Treasurer to the Governors of Queen Anne's Bounty?—I am.

2. And, in fact, you have the practical working of Queen Anne's Bounty?—Under the Board, I have the practical working.

3. From your position, I presume that you are generally acquainted with ecclesiastical matters?—I have necessarily acquired some knowledge of them.

4. And you are acquainted, I suppose, with most of the subjects relating to Church benefices?—Yes, I think I may say so.

5. I think that you have considered this question of ecclesiastical dilapidations for some years?—Yes, both before and since the passing of the Act of 1871.

6. Will you state to the Committee, if you please, the number of parochial benefices in England and Wales?—They have been, year by year, increased; the exact number at the present moment is 13,426.

7. How many of those have parsonage houses? There is no return in existence which would give that with precision.

8. Would about 12,000, or 12,500, be a fair estimate of the number of benefices with parsonage houses?—I think that it would be rather above the actual number. I should say that there are about 11,500 benefices that have residences attached to them.

9. Of the number of parochial benefices, in round figures, how many are in public patronage, and how many are in private patronage?—Some years since I made a computation from the Clergy List, and I found that the numbers were about in equal moieties.

*Chairman*—continued.

10. That is about one-half in public patronage and the other half in purely private patronage?—Yes; half public, and the other half private; as to the latter, the advowsons can pass by sale.

11. Previously to the Act of 1871, I think that the bishops of the different dioceses had, practically, nothing to do with the dilapidations?—Certainly not.

12. If disputes arose, they were left to be settled by common law proceedings as between ordinary subjects, were they not?—Undoubtedly so.

Mr. *Monk.*

13. Is there not an exception to that in sequestrations?—No, I think not; as to what was the case before the Act of 1871.

14. Was not the sequestrator obliged to see that the buildings were kept in repair?—If supposed to be his duty, it was neglected.

*Chairman.*

15. As between a new incumbent and the representatives of a deceased incumbent, the bishop, practically, took no part at all?—No part whatever.

16. That was left to be settled entirely between the parties?—Entirely.

17. No one interfering, as a rule, either on the part of the patron or on the part of the Church?—On the part of the Church, no one. On the part of the patron I should think that sometimes there would be an interference; but that was not,

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*Chairman*—continued.

not, generally speaking, the case. There was no legal right to interfere on the part of the patron.

18. You are of course acquainted with the case of Wise *v.* Metcalfe, which is a leading case on dilapidations?—Yes.

19. That was acted upon generally, was it not, previously to this Act being passed?—Undoubtedly. In so far as the law of the case is concerned, I apprehend that it is still the case which should guide and govern the diocesan surveyors.

20. That is to say, if there was any power of appeal from them?—It should guide the bishop when he is appealed to as against the decision of any of the surveyors.

21. But under this Act of 1871, the bishop is the sole authority in the place of the common law courts, is he not?—He is made so by the Statute.

22. And he is, in fact, the absolute authority, from whom there is no appeal at all?—There is no appeal whatever from him.

23. Under Section 16 of the Act of 1871 there is no appeal from the surveyor on the part of the clergy, except with the permission of the bishop; is not that so?—That is so. The bishop may, if he thinks fit, direct a second report to be made, at the expense of the party objecting.

24. That is to say, that in the event of a surveyor valuing dilapidations contrary to the principle of the leading case, if no remonstrance is made within a month, his decision is absolute?—Quite so.

25. And if a remonstrance is made within a month, then it is at the bishop's discretion to grant a new survey at the expense of the party objecting; is not that so?—It is so.

26. And then it rests entirely with the bishop's own decision whether an alteration is made or not?—The bishop may direct a second survey; or he may take the opinion of counsel upon any question of law; and having, at the expense of the party objecting, taken either the second survey, or the opinion of counsel, or both, he then gives an absolute binding decision.

27. And his decision creates an absolute debt, does it not?—It does.

28. I think under the Act the surveyor has also to fix the time at which the work is to be done?—Yes; that is part of his duty.

29. And that becomes also imperative?—Unless the time should be extended by the bishop.

30. What is the time which the bishop is enabled to give as an extension under the Act?—In non-vacant cases the time of extension is not specified; in vacant cases, the money should be paid over within six months from the date of the order; the bishop can, however, extend the period to 12 months; the repairs are to be executed within 18 months.

31. I think that before this Act was passed, there was no regular authorised inspection of parsonage houses at all?—Not any. There is an ecclesiastical duty, or what is reputed to be such, resting upon the archdeacon; but I think I am perfectly right in saying that it was a duty that had fallen into disuse; and that the archdeacons have for many years given up visiting the parsonage houses of their neighbours, with a view of examining as to their state of repair.

32. I think that the archdeacon on his visitation required some formal returns; but those, you think, were merely formally answered and formally accepted?—Yes, quite so.

*Chairman*—continued.

33. On a change of benefices it was practically left, was it not, to surveyors appointed on each side?—It was; but when an incumbent, with the permission of the bishop and patron, seeks to exercise the borrowing powers, under what are called Gilbert's Acts, namely, under the 17 Geo. 3, c. 53, &c., the bishop is directed to issue a Commission of Inquiry, addressed to two or three neighbouring clergymen, to ascertain whether the incumbent who wishes to put a charge upon his benefice has neglected the repairs of his buildings, and whether he has duly applied the sum which he may have received from his predecessor in respect of dilapidations.

34. That was for the mere purpose of enabling the Governors of Queen Anne's Bounty to advance money under the Act, was it not?—It was to satisfy the bishop before he gave his consent to the loan. So far as the Governors of Queen Anne's Bounty were concerned, they did not actually require the Commission; and the mortgage was perfectly good whether the Commission was issued by the bishop or not; but, even then, I think I am right in stating that the returns to the Commission were not very critically examined by the bishops.

35. Under the old system, previously to the Act of 1871, the amount that was ascertained to be payable in respect of an outgoing or deceased incumbent was always paid over to the hands of the new incumbent, was it not?—Always.

36. And it was left entirely to his own discretion to appropriate it for the purpose of doing the repairs?—Quite so; at his own time.

37. Do you know any instance of any attempt having been made to exercise an authority over incumbents in that respect?—As to dilapidations, not any.

38. There were occasional losses, were there not, on account of the poverty of a deceased incumbent; that is to say that there were cases, whether many or few, where the representatives of a deceased incumbent were unable to pay the amount assessed for dilapidations?—No doubt there were.

39. Is there any remedy provided for that by this new Act?—There is power given to the new incumbent, where he is unable to obtain the amount due from the estate of his predecessor, to borrow from Queen Anne's Bounty; and to place a charge upon the benefice, to the extent of the amount assessed by the surveyor.

40. But there is no other remedy, is there, now than that which existed before as regards the recovering from the representative of a late incumbent?—Not any except that dilapidations are made by this Act a simple contract debt, to rank equally with other debts; whereas, under the old law, the claim stood behind the simple contract debts. Beyond that the matter stands the same. It is a debt from the outgoing incumbent to the new incumbent, and must be recovered by him, if necessary, in some proceedings at law or in equity.

41. I believe that this question has been considered for several years by the Convocation of the Southern Province?—The Lower House of Convocation of the Southern Province have presented two Reports upon it, and they have a third in the press.

42. Are you acquainted with the Irish Act of 1851, called Napier's Act?—Yes, I have looked over it. It was one of the two or three Acts passed

*Chairman*—continued.

passed at that time for the consolidation of the Irish Church Statutes.

43. Under that Act a distinction is made, I think, between dilapidation and permanent improvements?—That is so.

44. Is there in that Act a stipulation that two years' income is the extent that can be recovered?—It is so. Two years' income is the extent that might be charged upon an Irish benefice. In England, at the present time, three years is the limit; except in some very few special cases, where the bishop, after the vacancy of a living, comes forward himself as the borrower. Under 1 Vict. c. 106, where the great object was to enforce residence, the bishop is allowed by Parliament to borrow four years' income.

45. But I think that, previously to the passing of the Act of 1871, there was some general discussion with regard to meeting questions of repairs by insurance, according to the value of the living?—From time to time there have been several proposals of that kind. There are two classes of insurance that I remember. One I put out myself, and another was put out by the Reverend John Hodgson. He connected his with a plan of insurance upon the life of the incumbent for the time being. That was special life insurance. Then there was my own, which was put in the form of a paper in the year 1869 or 1870; the principle of which was to set aside a small annual payment by the incumbent for the time being, presumably, sufficient to meet all the dilapidations that would arise; and if he wished any further works to be done they would be at his own personal expense. The fund, in various proportions, to be applicable at different periods to the several repairs required.

46. Do you think it possible that, under some general system, the existing state of dilapidations of benefices could be ascertained generally in each diocese?—Yes, I think so.

47. And if some scheme were provided they could be met?—I think they might be met by borrowing.

48. With regard to the insurance, you think that future dilapidations could be estimated, so as to govern any principle or rate of insurance?—Yes, I think so; both as to the fabrics and as to the contingency of fire.

49. And you consider that a sound Dilapidation Bill could be founded on such principles as that?—Yes; I think one might be prepared which would be more generally satisfactory to the clergy than the present one.

50. Would you give the Committee some sort of general view of the things which you consider ought to be provided for in a Bill of that description?—The first thing that I would suggest would be a consolidation of all the Statutes bearing upon the subject, as was done in the year 1851 with regard to the Irish Statutes. The next general thought that occurs to me is that the period of two years in the case of the Irish benefices would be a great deal too little for the English, because I deem three years to be insufficient, the price of building being so much higher than it used to be. Then, I think, a larger outlay would be desirable in constructing more substantial buildings, where new buildings are erected; and in making improvements and reparations very substantial, when it is a case of restoring an old building. And then I would spread the period of repayment of the money borrowed over a greater number of years; at present the extreme limit is 31 years, and during the first 10 years of the charge the incumbent feels it a very heavy pressure. He pays a thirtieth part of the principal back yearly, together with interest at 4 per cent.; so that after the first year, when he only pays interest, the charge for the second year is as high as 7⅓ per cent.

*Chairman*—continued.

51. You mean so as to make the permanent benefit chargeable more upon the living than upon the individual?—I would let the Church obtain the benefit out of the current income of the incumbent more slowly than it does at the present time.

52. When the Act of 1871 was brought forward, do you know that there was a general feeling on the part of the clergy that they would derive a greater benefit in respect of dilapidations from Queen Anne's Bounty;—No doubt they expected to borrow largely.

53. That was the general inducement to them to give their adhesion to it, was it not?—It was one general inducement.

54. Has that expectation been realised as regards small livings?—Not as regards many of the livings, I think, taking them collectively; because the Board of Queen Anne's Bounty have felt that it was not right for them as a Board, having an option whether they should lend or not, to encourage the application for loans by incumbents where the incumbents were of long standing. If Parliament intended the clergy to have that kind of relief, the Board could not see it in the Statute; and exercising the best judgment they could give to the matter, after debating it very fully, they came to the conclusion, that they were not to relieve the clergy from their dilapidations, but, as a rule, only to grant loans where the incumbent in possession was quite unable to recover from his predecessor or his estate the amount which had been put as a charge upon the benefice. To this the exceptions have been few.

55. The governors of Queen Anne's Bounty have another requirement; they require the living to be of sufficient value to give a good security, do they not?—Undoubtedly; because the Board, as lenders of trust money, must look at the nature of the security.

56. And therefore, in the case of a living of 100 *l.* a year, you would hesitate to advance anything?—In all probability a loan must be refused in such a case; because the rule is that where the population requires a stipend equal to the amount of the income, supposing the incumbent to be non-resident, the Board would decline a loan, there being no margin of security for the annual repayment.

57. Does not that same principle reach up to livings of 200 *l.* a year?—The highest legal stipend is one of 150 *l.*, where the population is 1,000 or upwards, and therefore, practically, it would go up to about 170 *l.*

58. So that in the case of buildings to some extent dilapidated in a small living, the man must find the money himself?—Undoubtedly; and in those cases it is sometimes extremely difficult for the patron to get a living taken by an incumbent where there are very heavy dilapidations pending with an insolvent predecessor.

59. Under the Act, the new incumbent, whatever his remedy may be over the old one, has to find

Mr. *J. K. Aston.*

6 April 1876.

*Chairman*—continued.

find the amount of the dilapidations paid to Queen Anne's Bounty, has he not?—Quite so.

60. That is a duty cast upon him by the Act, whatever the amount certified by the surveyor is, and, if unappealed against, he must find it and get it back from the late incumbent as he can?—Just so; he is liable to pay, but is allowed six months in which to recover the amount; so that it is now more difficult for matters to glide on as they are than it used to be; formerly an incumbent took a living as he found it, and passed it on in pretty much the same state, only a little worse. Now if a gentleman takes a benefice, he is applied to by Queen Anne's Bounty for the payment of the money; and the bishop has a right to sequester the benefice upon non-payment.

61. Firstfruits and tenths under Queen Anne's Bounty from which you originally derived your property, are contained in a book called the "*Liber Regis*" under a Statute of Henry the Eighth, are they not?—They are.

62. And the livings are valued, and upon that valuation, subject to certain modifications in Queen Anne's time, you collect your funds?—There are no modifications with regard to the amount in the book, but there were certain livings exonerated from payment.

63. Practically, that valuation in the book of Henry the Eighth's time guides you at the present time?—Absolutely in all cases, except as regards the bishops and cathedral appointments, &c.

64. And except that under a Statute of Queen Anne, small livings under 50 *l.* a year were let off?—Yes.

65. The principal object of Queen Anne's Bounty was the augmentation of poor livings, was it not?—That was the main object of the Act of Incorporation and of the Charters.

66. There has been another alteration, I think, as regards the bishops, the Ecclesiastical Commissioners and Corporations, which perhaps you will state to the Committee?—When the prebends and offices were suppressed under the Ecclesiastical Commissioners' Statutes, the Queen Anne's Bounty had a right to the tenths and firstfruits in respect of those preferments; and the Act 4 & 5 Vict. c. 39, s. 4, contains a scheme in settlement of that charge. The yearly tenths are paid at the same rate as they were in Henry the Eighth's time; but with regard to institution, sums which were only payable when a new incumbent was put into one of those benefices or preferments, as there would be no future appointment, it might have fallen into disuse and non-receipt altogether, except for the arrangement arrived at, which was, that it should be considered that each incumbent would hold such a preferment for about 20 years; and, therefore, that a 20th part of the sum fixed at the time of Henry the Eighth should be now payable; and the Commissioners pay at this rate.

67. Will you tell the Committee what was the alteration with regard to bishops?—With regard to bishops, an estimate was made, and when their incomes were equalised, the charge was fixed in conformity with 6 & 7 Will. 4, c. 77, and an Order in Council, gazetted 17th December 1852, at 1 *l.* 17 *s.* 6 *d.* per cent., to cover both the firstfruits and tenths.

68. In granting sums for the augmentation of poor livings under the directions of the Act, it was the custom, I believe, to purchase small tracts of freehold lands and buildings?—The great

*Chairman*—continued.

object with the Board was to lay out the money as soon as they could in the purchase of real estate; and as the sums were small, they have, generally speaking, made very small purchases, in various parts of the country, near the living if possible, but very often in remote districts.

69. Is there a great number of cases in which the purchases have been made at long distances from the livings?—Sometimes many miles away.

70. And very frequently not in the same parish?—Very frequently not.

71. As soon as that augmentation by purchase is made, the incumbent becomes liable for dilapidations in respect of that, does he not?—Undoubtedly so.

72. In the purchase by the governors, did they look at the question of repairs?—Not always, but oftentimes.

73. Do you think they did so at all?—Yes.

74. In olden times it was not the practice, was it, to have returned to you, in making the purchase, what state the buildings were in?—Yes, both in olden and modern times; the papers show that inquiry was always made by the Board as to the state of repair of property proposed to be purchased for a benefice.

75. I think the Governors of Queen Anne's Bounty have made several small purchases in Westmorland?—Unless actually dilapidated, I should say that they did not go into the question of the actual state of the buildings, except as one element to determine whether the property was worth the sum asked for it.

76. But, at all events, as soon as it becomes attached to the living, the incumbent becomes liable for all dilapidations?—Yes, and that is so under the present law.

77. Did the Governors of Queen Anne's Bounty ever erect buildings themselves as an augmentation?—Not directly; but they allow the incumbent to so spend the money that may be given at the present time to his living.

78. Do you give money for the erection of parsonage houses as an augmentation, or do you only lend it?—To livings of 200 *l.* a year and under, money is given to meet benefactions from individuals or some public body.

79. Do you in every case require a benefaction from a public body, or individual, before you make a grant of that sort?—Yes; practically that has become so.

80. And then immediately this building or parsonage house is erected, the incumbent becomes liable to a charge for dilapidations?—Yes, immediately; or if the incumbent should receive a house as a gift, he then becomes liable for the dilapidations.

81. Are there any cases where the governors of Queen Anne's Bounty have given an augmentation in consideration of a gift of property?—There have been such cases almost every year.

82. Going generally to the Act of 1871, that practically has entirely displaced the old law, has it not, as regards the remedy?—Undoubtedly, as regards the remedy, it has.

83. As you said in the earlier part of your evidence before the Committee, the bishop is the sole judge?—He is so under the Statute of 1871.

84. That is to say, subject to the limits of the surveyor's report?—Quite so; but I think that he might extend the amount if he thought proper in vacant cases.

85. But

*Chairman*—continued.

85. But he cannot give less than the amount can he?—I think so; upon objection made, he might alter it either way.

86. Then you think that his power is absolute, and not controlled?—It appears to be an absolute power.

87. What provision is there in the Act with regard to insurance against fire?—Every incumbent is directed to insure under Section 54, which says: "The incumbent of every benefice shall insure, and during his incumbency keep insured, the house of residence, and farm and other buildings for the time being, standing on the lands belonging to such benefice, and the outbuildings and offices respectively belonging thereto; and also the chancel of the church when the incumbent is liable to repair the chancel, against loss or damage by fire, in some office or offices for insurance against loss or damage by fire to be selected by such incumbent to the satisfaction of the governors, in at least three-fifths of the value thereof." But there is no direction given as to how the value is to be ascertained; and "the satisfaction of the governors" has been held to mean not as to the value, but as to the name and nature of the office in which the insurance is to be taken out Therefore, all that the governors do is to inquire if a place has been insured, and to keep a memorandum of what office it is reputed to be insured in. Then there is a direction with regard to the filing of the annual receipts. That was intended to be the means by which the clergy should be kept to this special duty; they were to produce the annual receipts. Certain questions were to be added to those put under 1 & 2 Vict. c. 106, as to what office and for what amount the buildings of the benefice are insured against fire, and as to the amount and date of the last annual payment for such insurance; and then there is a direction to produce the receipts at the visitations.

88. There were certain minute regulations with regard to fire and insurance, but practically they have to file them at the registry of the bishop?—They have to produce them on visitation.

89. With reference to the surveyor, have the parochial clergy any direct power or voice in his appointment?—Not any, I think; because the rural deans, by whom the surveyors are selected, are always, I believe, appointed by the bishop.

90. And the bishop beyond that must approve them?—Section 8 of the Act of 1871 says, that "a surveyor or surveyors of ecclesiastical dilapidations shall be appointed in and for each diocese by the archdeacons and rural deans, if any, of such diocese, assembled at a meeting convened for that purpose at which the bishop of the diocese, or in his absence the senior archeacon present, as to the date of his appointment as archdeacon, shall preside, and shall be subject to the approval of the bishop of the diocese."

91. So that although the rural deans and archdeacons have the power of nominating the surveyor, he must still be approved by the bishop?—He must.

92. And the bishop also has an absolute power to dismiss any such surveyor if he chooses, has he not?—He has that power after giving an opportunity of showing cause to the contrary.

93. Can you produce to the Committee a list of the surveyors that have been appointed in each diocese?—Yes; this is a list of the surveyors. (*The same was delivered in,* see *Appendix.*)

*Chairman*—continued.

94. This, you have been able to ascertain in your official capacity, is a correct list?—This is a correct list up to the present moment, and it contains the names of 53 surveyors for the whole of England and Wales.

95. Under the provisions of the Act there is a power in the bishop, is there not, to settle the fees to be paid to the surveyor, and also the fees to be paid to the bishop's secretary and registrar?—Section 10 of the Act of 1871 says: that the fees "shall be fixed in each diocese by the bishop, the archdeacons, the rural deans, if any, and the chancellor for the time being of such diocese, assembled at a meeting convened for that purpose."

96. Can you produce to the Committee also a table of fees for each diocese; I think that the tables generally comprise the fees of all the officers?—For the three officers, the surveyor, the secretary, and the registrar.

97. I think that an Act was passed in 1872 directing a uniform scale of fees?—Recommending it.

98. That Act, which is 35 & 36 Vict. c. 96, s. 3, says: "It shall be lawful for the Archbishop of Canterbury, the Lord High Chancellor, and the Archbishop of York, with the assistance of the two vicars-general of the said two archbishops, with the consent of the Lords Commissioners of Her Majesty's Treasury, at any time during the year 1873, to review the rates of the fees of the bishops' secretaries and registrars, and the rates of surveyors' charges for work done in pursuance of 'The Ecclesiastical Dilapidations Act, 1871,' as fixed, or authorised to have been fixed, under the 10th section of the same Act for the various dioceses throughout England and Wales," and to ordain, in lieu thereof, one uniform scale?—It was so.

99. But that I believe has never been acted upon?—It has never been done.

100. Under the Act of 1872 neither the archdeacons, nor the rural deans, nor the chancellors of the dioceses have any voice, I think?—Not any.

Mr. *Monk.*

101. Has not the power under that section of the Act of 1872 expired?—It was to be in force for twelve months or so after the Act was passed.

102. Therefore they have no longer any power to frame a uniform table of fees?—That power has lapsed.

*Chairman.*

103. Nothing has been done?—Nothing has been done.

104. And the various scales of fees in different dioceses still remain in operation?—They do.

105. Can you state to the Committee what is the average amount of fees in each case of the survey of dilapidations, exclusive of the surveyor's commission?—Those facts are not before the Bounty Board, because where the incumbent calls in a surveyor he pays the fees; it is a matter between the parties, and the figures are not before the Governors of Queen Anne's Bounty. The only cases in which I can give the Committee the figures, are cases in which the governors have been asked to lend the money. In all the cases of money lent for costs, the Governors have required the diocesan scale to be supplied to them, and have compared the charges with the scale. It is that circumstance that puts

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*Chairman*—continued.

me in possession of the scales, otherwise as secretary to Queen Anne's Bounty I should have no knowledge of those scales, because they are between the clergy and the diocesan surveyors.

106. But you have a knowledge of them incidentally?—I have a knowledge of them incidentally in connection with the loan cases. The information is reliable to the extent to which it goes, but it may not cover every diocese. I could give the Committee certain cases, where a bill was sent in, and supply the particulars of the charges.

107. Will you hand in the scales of fees which have come to you under the applications for loans?—Yes. (*The same were delivered in*, see *Appendix.*) There are 27, one for each diocese.

108. Can you give some illustrations of the accumulated fees to surveyors, secretaries, and registrars, for applications for loans to you?—There is a record of 76 cases which have passed the Bounty Board for payment and which have been paid, in which the sums averaged 9*l.* 17*s.* 2*d.* each to the surveyors.

109. That is exclusive of commissions, those are simple fees?—They are fees payable under the Act of 1871.

110. Those are fees under the scale of fees which you have put in?—Yes. The secretaries and registrars were not paid in the same number of cases; they were paid in 60 cases. We estimate those at about 2 *l.* in each case; so that the average cost would be 12 *l.* for the three officers.

111. Supposing that this Act was put in full operation, have you made any calculation as to what the amount of fees would average per annum?—The principle of the Act is to have a certificate of exoneration every five years. To carry that out would involve a fresh inspection every five years; and taking 12*l.* a case as the basis, it would cost upwards of 30,000 *l.* a year in fees to carry it into effect.

Mr. *Gregory.*

112. Is that a quinquennial inspection that you are referring to?—Yes. A quinquennial inspection of all the benefices would average 30,000 *l.* a year and upwards in costs.

*Chairman.*

113. Under the Act of 1871, the whole amount included in the surveyor's Report, I believe, has to be paid into Queen Anne's Bounty Office?—In all vacant cases.

114. Will you state to the Committee the amount that has been paid in to Queen Anne's Bounty Office on vacant cases, during the four years that the Act has been in operation?—From 1871 to the end of 1875, the total sum received by Queen Anne's Bounty was 290,624 *l.* by direct receipts; and then the governors, during that period, lent, chiefly in cases where the incumbent was unable to recover from his predecessor, 31,928 *l.*; making an aggregate sum of 322,553 *l.* carried to the credit of the Dilapidation Account.

115. How much of that fund have you in your hands at the present time?—Allowing for the sum of 218,885 *l.* paid out, there remains a difference of 103,668 *l.*, which is in the hands of the governors of Queen Anne's Bounty.

116. And that you cannot pay out until you get the surveyors to file a certificate?—It cannot be paid out until those certificates are received.

117. If this Act is continued intact, I suppose

*Chairman*—continued.

that you must always have a very large sum left in your hands?—I think so, because at the end of 1873 there was a large sum; at the end of 1874 there was about the same amount; and at the end of 1875 there was a still larger sum; so that I estimate that the office will probably have about 100,000 *l.* always in hand.

118. Looking generally to the operation of the Act, would you say that this is the effect of it; that the new incumbent has to pay the whole amount of the dilapidations to Queen Anne's Bounty?—Yes.

119. And he must do the repairs before he can get his certificate?—Undoubtedly.

120. Does that involve the payment by him of a larger sum than the whole amount of the repairs for the time?—Not necessarily; but practically, very often it does so. Because two courses would be open to him. He might call in the builder and say, "Now enter into a contract with me to do these repairs according to the particulars given by the diocesan surveyor, and the money will be payable to you by the Bounty Fund when you have completed the works to the satisfaction of the surveyor." In that case he would not be called upon to find the money twice over; he would pay the amount into Queen Anne's Bounty Office to remain there at call, and when called for by the certificate of the surveyor, countersigned by the bishop, the money would be paid to the builder. But looking at the nature of the certificates that the office receives, I find that very often the clergy do the work and pay for it themselves, and then obtain the money from the office by way of reimbursement. Fully one-half or more of the certificates received do not direct the office to pay the money out to builders who have done the work, but to the incumbents who have satisfied the builder and the architect that the works are done and paid for.

121. That would be very frequently the case, I presume, where the dilapidations were of small amount?—The amount does not appear to govern it at all.

122. But if dilapidations were only to the amount of 40 *l.* or 50 *l.*, they are not likely to enter into a contract for them, I presume?—No. And then again when it is outdoor work, such as fencing, or anything of that kind, the incumbent is obliged to get it done by daywork, and in those cases he must find the money.

123. Practically, twice over?—Practically, twice over.

124. Will you hand in the form of queries to be answered by an incumbent of a benefice, on application to the governors of Queen Anne's Bounty, for a loan under the Act of 1871?—Yes. (*The same was delivered in*, see *Appendix.*)

125. One of the requirements in this printed statement, which you have put in, is that you require the bishop's consent to the loan?—The Statute requires the consent both of the bishop and of the patron.

126. Are there any objections in your mind with reference to both or either of those assents?—The consent of the patron, I think, should never be dispensed with.

127. What is the amount of loans that you have granted under the Act?—£. 31,928.

128. Will you tell the Committee the average period of time over which those loans were spread?—The longest time under the old Act was in the year 1871, before the Act of 1872

was

*Chairman*—continued.

was passed, which gave the Board the power of shortening the period. That was for 31 years; Now there are shorter periods, for five years, where an incumbent has been long resident. If the bishop and the patron both press the loan, the Board will generally lend for five years; but if the incumbent has attained the extreme limit of human life, they decline it altogether.

129. You make the age of the incumbent an element?—A very important element; so that a man of 80 would have no prospect of obtaining a loan at all; nor would a man at 70, unless he had some very special grievance to allege, such as that he had succeeded an insolvent incumbent, and had been put to great outlay, or something of that kind. But as a general rule, all aged incumbents, whether they have been a longer or a shorter time in the living, would be refused a loan.

130. You look to get back your money within the period of the incumbent's life?—Yes.

131. Not making it charge upon the living of the successor?—It goes as a charge upon the living.

132. But in assenting to or refusing the loan, the probability of getting the money back in existing incumbent's life is an element which guides you?—The Board so consider it.

133. Under Section 16 of the Act of 1871, if no objection is made to the surveyor's report within a month, it becomes absolute, does it not?—That is so.

134. Both as to the works in detail, the cost, and the time within which the works are to be executed?—It does not become absolute as to the cost, but it does as to the works to be done.

135. And the period in which they are to be done?—Quite so.

136. The bishop may take, at his discretion, the opinion of counsel, or he may direct a second report to be made by another surveyor, may he not?—Yes; that applies to both classes of cases; that is to say, to those on request, and to those in a later part of the Act, in Section 32, where it is after a vacancy.

Mr. *Beresford Hope.*

137. Is the other surveyor, whom the bishop may direct to report, another surveyor of the whole body under the Act, or any surveyor anywhere?—It is open to the entire profession at the discretion of the bishop.

*Chairman.*

138. Under Section 29 of the Act of 1871, I think that every benefice must be inspected on vacancy, unless the incumbent has been exempted in the five years' section?—Yes; and also again if the works have not been completed since a very recent inspection, should there be a premature second vacancy.

139. Supposing that any augmentation is made, or that there is any benefaction to the living in the shape of buildings, previously to the five years expiring, and supposing a vacancy to occur, does that justify the surveyors making a new report of dilapidations?—I think not.

140. You have not had such a case before you?—No.

141. Every other benefice may be inspected, may it not, provided a complaint is made either by the archdeacon, or by the patron, or by the rural dean?—Yes.

*Chairman*—continued.

142. And then the same powers are vested in the bishop, and there is the same finality of the surveyor's report unless there is an objection within a month?—Quite so.

Mr. *Wait.*

143. Is it at all common to inspect under the 12th section at other times than when the benefice is vacant?—There have been a number of inspections on request; many hundreds of them

*Chairman.*

144. Supposing that the repairs are not done within the time, and that the bishop gives no limit of extension, then the bishop directs the surveyor to inspect and report?—The Act requires, upon default, that the repairs shall be executed under the direction of the surveyor.

145. And, in addition, he may raise the whole amount of the costs and fees?—Yes.

146. And then the bishop has to pay the amount to the governors of Queen Anne's Bounty?—Yes.

147. Immediately the report is final, either by fluxion of time or by the bishop's decision, the new incumbent, in case of vacancy, becomes absolutely liable to to pay it, does he not?—Whether he recovers the amount or not, he is liable to pay it.

148. And if he does not pay it, the sequestration powers come into operation against him, do they not?—They do.

149. Supposing that a new incumbent has paid into Queen Anne's Bounty Office the amount stated in the surveyor's report, he is still liable to do the repairs, is he not?—Yes, unless he obtains a certificate of postponement of works.

150. Supposing that the repairs come to more money than the surveyor has estimated, the new incumbent is still liable, is he not?—He is still liable to pay the difference out of his own pocket without any remedy; but then, on the other hand, if the works are done for less than the amount, the Statute of 1871 gives him personally the benefit of it; he does not return it to the estate of the deceased incumbent from whence it may have been obtained, but it is payable to the incumbent himself.

151. Supposing that a vacancy occurs pending the execution of the repairs, under Section 49 of the Act of 1871, what obligation is there on the second new incumbent?—He takes the place of his predecessor, and he has another inspection. If the amount assessed at the second inspection should be more than it was at the former one, presuming that incumbent number one may have paid the sum into the Bounty Board, the second incumbent pays in the difference only; and if it is less he would be entitled to the balance of the account.

152. Is there any power for the incumbent, in laying out this money, to make any alteration in the buildings?—Yes, there is power, under the later sections of the Act, to alter the buildings with the consent of the bishop and the patron, and the certificate from the diocesan surveyor. That is under Sections 50, 70, and 71; Section 50 gives power to alter and remodel the buildings belonging to the benefice or any of them, or to rebuild them, or any of them, so as to render such repairs, or any of them, impracticable or unnecessary, with the consent of the bishop and patron; "and in such case the surveyor shall,

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upon the completion of such works to his satisfaction, give a special certificate certifying that the same have been completed."

153. But under that section, in addition to the consent of the patron and the bishop, you want the satisfaction of the surveyor?—Yes.

154. In the case of a fire occurring, the money is to be paid into Queen Anne's Bounty Office in the same way, is it not?—That is so, and such sums have to be laid out by the direction of the surveyor; he regulates the contract.

155. That is to say, that the power and inclination of the incumbent is made altogether dependant upon the surveyor's report?—With regard to fire cases it is so; with regard to fire insurance there is a curious blemish or peculiarity in the Act; it says that the incumbent is to insure for three-fifths of the value; but he is still liable for the whole sum.

156. And he has to lay out the whole sum under the direction of the surveyor?—Yes.

157. That applies to all cases of parochial clergy, does it not?—To all of them; and under the Statute, whether they have buildings or not, they are liable to inspection; because until the surveyor inquires into the terrier or some particulars of the benefice, he does not know whether there is anything to survey.

158. In the case of the residences of archbishops, bishops, deans, and canons, what is the distinction made with regard to inspection?—They are put by the Statute under the Ecclesiastical Commission, with the privilege of employing any surveyor that may be approved of by the Ecclesiastical Commissioners.

159. That is to say that the parochial clergy must have the diocesan surveyor, but that the Church dignitaries may employ any surveyor that they choose, so long as the Ecclesiastical Commissioners approve of him?—Yes.

160. And his report gives them the five years' exemption?—Yes, in the same way that the clergy obtain it through the diocesan surveyor.

161. Under Section 58, the Act is made not to apply to any buildings under lease, is it not?—Yes; the section runs thus: "The provisions contained in this Act in regard to buildings standing on the lands belonging to any benefice, shall not be applicable to the buildings (if any) belonging to the benefice, which shall be comprised in any lease, for years or lives, for the time being subsisting, so long as such lease shall be subsisting, except so far as the lessee shall not, by virtue of such lease, be liable to insure, rebuild, or repair such buildings, but it shall be lawful for the surveyor to inspect the buildings comprised in any such lease."

162. Supposing property to have been under lease at the time of the Act coming into operation, does the existing incumbent when the lease expires become liable under this Act to the whole of the dilapidations that may then exist?—Yes, I think he would become so liable.

163. Have you heard of any instance where the covenants of the lease fell very far short of the surveyor's estimate of dilapidations under the Act?—I have heard of a case of that kind.

164. The incumbent would in that case have to pay the difference, would he not?—He would be personally liable for the difference.

165. Without any control on his part pending the lease?—Undoubtedly so.

166. Or without having granted the lease?—Yes; the lease might have been granted by his predecessor.

*Chairman*—continued.

167. I believe that you individually, since you have come into office, have considerably reduced the expenses of Queen Anne's Bounty Office in lending money?—Yes, a considerable reduction in the expense attending an application made by a clergyman for a loan has been effected. It used to be done by professional solicitors out of the office, and it is now done within the office.

168. What are now the expenses of lending money by the governors of Queen Anne's Bounty?—With regard to both kinds of loans, whether as to Gilbert's Loan, which is for building or improving, or whether for repairing under the Dilapidations Act, it is a scale which has been laid before Parliament, and adopted by the governors after some consideration. It varies from 10 *s.* to 5 *l.* There is a fee of two guineas to the bishop's secretary and of 12 *s.* to the registrar, and the office expenses of the loan will be 1 *l.* per cent. upon the sum lent; or 1 *s.* for every 5 *l.*, no charge being less than 10 *s.*, nor, however large the loan, does it exceed 5 *l.*

169. And that includes the mortgage deed itself, does it not?—Yes, and the two guineas to the bishop's secretary and the 12 *s.* to the registrar.

Mr. *Gregory.*

170. Are your deeds stamped?—No, they are free from stamps.

*Chairman.*

171. I think if you turn to the Act, sections 67 and 68, the surveyor has a right to enter without notice at all times without being liable to any action for trespass?—He has the right to enter at all reasonable times.

Mr. *Monk.*

172. Is there any mode of enforcing that?—It would be rather difficult to enforce it; but still, I suppose, the surveyor would be justified in forcing his entry.

173. By a magistrate's order?—Yes.

Mr. *Wait.*

174. Then the quinquennial period does not apply to this section giving power to the surveyor to enter?—Yes, I think it does.

*Chairman.*

175. You have heard, of course, a great many complaints on behalf of the clergy with reference to this Act?—Of course in the five years I have heard a good many complaints; but I have also heard a good many commendations of the Act.

176. Do you think that it would be fair that the clergy should be able, either to have a voice in the nomination of the surveyor, or to appoint their own surveyor in questions of dispute?—I think so; I do not think that it would cost them less money; but still it would be more satisfactory to them.

177. Or that they should have an absolute right of appeal?—They might have an absolute right of appeal to an independent tribunal; I think that would be far better. In working this Act, a great blemish has appeared from time to time in there being no central authority which could give an authoritative opinion to the surveyor

*Chairman*—continued.

veyor on one side, and perhaps to the clergy on the other.

178. Or who could say in an authoritative manner what was comprised in the dilapidations?—Yes.

179. You know, I suppose, the limitations on dilapidations in Wise *v.* Metcalfe, the case to which we referred before?—Yes; it is very shortly laid down in "Burn": "In Wise *v.* Metcalfe, it was held that an incumbent of a living is bound to keep the parsonage house and chancel in good and substantial repair, restoring and rebuilding when necessary, according to the original form, without addition or modern improvement; but he is not bound to supply or maintain anything in the nature of ornament, such as painting (unless that be necessary to preserve exposed timber from decay), and whitewashing and papering; and in an action for dilapidations against the executors of a deceased rector by the successor, the damages are to be calculated upon this principle. This case contains an exposition of the whole law on this subject."

180. Perhaps you would include outside painting?—I think that that is generally included by the surveyor; but not interior painting.

181. Would you include interior painting?—Not as a dilapidation; but if you have to provide for the sustentation of parsonages, then I should include it, on some plan that might be generally agreeable to the clergy.

182. Do you think that there should be any alteration of the law to this extent; that when new buildings have been erected, the incumbent should be exempted from liability in respect of old buildings?—In the Irish Act, to which you have called my attention, it was enacted that, upon the acquisition of a new parsonage by an incumbent in Ireland, he is no longer liable for the repairs of the old building; but that is not so in England; if he does not pull it down he still remains liable.

Mr. *Beresford Hope.*

183. If he keeps it and lets it, you mean?—If he lets it as a cottage tenement, which is often done, he puts upon the living a very undesirable burden, both for himself and for his successor.

*Chairman.*

184. Apart from any personal feeling that you may have, do you think that the Bounty Board might nominate a person as arbitrator in any cases of dispute between the outgoing and incoming incumbents?—Yes, I think so; or they could act themselves if a local inspection was not necessary.

185. You have practically before you every day these questions of loans for buildings and repairs, I presume?—Yes.

186. And you are obliged to be bound, to a great extent, by people whom you have no authority to appoint, are you not?—The Board exercise no authority in the appointment of surveyor or architect at any time; they allow the incumbent to choose his own architect; with regard to dilapidation loans, the Act puts them in communication with the diocesan officers; but the Board feel satisfied if the patron and the bishop concur, they may safely employ the agent who is introduced to them.

187. Previously to this Act, as long as you had a general knowledge of the position of the



*Chairman*—continued.

architect, you accepted his report as coming from a person who understood his work?—Yes, subjecting his plans and specification for the satisfaction of the Board, but not at the expense of the incumbent, to an examination by a London surveyor; not as to the nature or extent or desirability of the buildings, but as to the particulars of the specification, whether the materials proposed to be used were right and sufficiently sound and solid.

Mr. *Wait.*

188. Are you not of opinion that a local inspection would generally be necessary?—Undoubtedly.

189. Do you think that in that case you could satisfactorily undertake the duty?—I think that the Board could exercise all the necessary control, and could suggest the principles upon which the business should be conducted; and that they could also compile a list of local men, from which list anyone selected at the instance of the incumbent and the patron might be readily adopted, in the same way as the Inclosure Commissioners and other Boards have lists of surveyors of repute to whom business may be referred.

*Chairman.*

190. In that case, do you think that the Bounty Board, if they had more power within themselves, could have their lending power extended to smaller livings?—Where the living is under 200 *l.* a year, the Bounty Board encourage the incumbent to obtain a benefaction, in the hope of providing the parsonage house by way of gift rather than by way of loan.

191. But where an incumbent cannot obtain a benefaction, and where the living is small and there is a difficulty in filling the church by a new incumbent, do you think that it would be a wise operation for the governors of Queen Anne's Bounty to advance the whole sum?—I think that they might do so, and that the period of repayment should be made variable, so as to enable the amount of assistance to be sufficiently substantial to cause the work to be accomplished.

192. Many people may be able to obtain aid to repay a loan spread over a term of years who could not obtain it before they were known in the district at all?—Exactly.

193. If they ever obtain a benefaction, you make a grant?—Yes.

194. But would there not be great difficulty in a new man who was unknown in the district obtaining any assistance until the people in the district knew what he was?—That may tell either way.

195. Do you see any objection to an application of the funds of Queen Anne's Bounty to meeting the dilapidations and repairs of small livings without requiring a benefaction in the first instance?—It would require the action of Parliament to give that authority. I think that the loans might be extended to the poorer livings, and also that it is a point for consideration whether the money which is given might not be laid out in repairs. At present, if there is an application to the Board to repair a house out of money that belongs to a living, they of course decline, and say, "We can only lay out the money in building a house, or in buying some freehold estate; we cannot repair a house which has fallen into decay; that is the duty of the incumbent."

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*Chairman*—continued.

196. Do you think that the Board would be competent to determine appeals against the surveyors?—Yes, I think so. The Board has a large legal element mixed up with it; and the legal governors are very regular in their attendance.

197. And it could do that in a very inexpensive and simple manner?—I think so.

198. What rate of interest does the Bounty Board charge in dilapidation cases?—Four per cent.

199. Do you think that it is desirable to extend this period of five years, supposing that a parsonage house and the buildings had to be put in repair?—Yes; and I think that every five years is too often to require the incumbent to have his buildings subjected to an inspection.

200. Do you think that it might be safely extended to 10 years?—I think it might be extended to 14 years, or longer.

Mr. *Gregory.*

201. That 4 per cent. interest is in addition to a sinking fund, is it not?—It is.

*Chairman.*

202. With regard to the certificates of the diocesan surveyors, do you think that they may be safely dispensed with on the representation by the incumbent and the contractor, or the man who is actually doing the work?—I do not.

203. You would still require the certificate of a diocesan surveyor, would you?—I would not have two surveyors or architects employed.

204. Supposing that a man employs an architect of his own to do these repairs, would you be satisfied, assuming that you ascertained him to be a respectable man, with his certificate, instead of requiring that of a diocesan surveyor also?—Quite so. My own opinion would be that one good man is all that you require.

205. It is not likely, I suppose, that the clergyman and the architect would combine together to ask for money that was not fairly required?—It would be very unlikely; and I also think that the counter-signature of the bishop might be dispensed with upon the orders for the payment of money.

206. Supposing that an incumbent wants to expend more money in substantial repairs than the dilapidation comes to, do you make an advance to him for that purpose?—An application being made under Gilbert's Act, the governors could lend the money.

207. Gilbert's Act is limited to three years, I think?—It is limited to three years; and that also applies to the Dilapidations Act, so that an incumbent cannot borrow under both the Acts together more than three years' income.

208. Supposing a living to be only 120 *l.* a year, he could not borrow to the extent of more than 360 *l.*?—Not for all purposes.

209. Including the fees that are paid under the Dilapidations Act and all charges?—Yes.

210. Cases where the dilapidation is small seldom come before you, do they?—They do, sometimes.

211. Have you known cases where the amount of the fees has exceeded or nearly approached the amount of the dilapidations?—I do not think I have come across loan cases in which the fees have exceeded the amount of the dilapidations.

212. Have you met with any instances in which they nearly approached them?—There is a case in which the amount expended was 47 *l.*; in that the fees would not be above 12 *l.* or 15 *l.*

*Chairman*—continued.

213. Are you of opinion that the powers of the Bounty Board should be extended beyond the limitation in Gilbert's Act, where there are either very inferior parsonages, or none at all?—I think that that is a point well worth consideration.

214. Do you think that it would benefit the poor clergy more, to have a good residence supplied them, than to have a small annual stipend?—Yes, I think so.

215. With regard to the accounts; do you keep separate accounts for each benefice?—For each benefice, as directed by the Statute. As soon as a sum is paid into the office, it has to be carried to the account of A. B., and credited as dilapidations account.

216. What extra staff have you required in your office to work this Act?—I should think three new clerks at least, if not four; independently of those engaged in the old business, who have assisted.

217. Have you fixed any scale of fees that you are entitled to charge in reference to this work?—There has not been any scale proposed, because I represented to the Board that I thought the money lying idle in the governors' hands compensated them for the cost of working the Act.

218. Then the interest upon this 100,000 *l.*, or whatever it might be, you carry to the general fund of the Board for expenses, and you make no special charge under the section of the Act?—That is the way in which the Statute has been worked; each gentleman when he pays in his money being told that he can either have it invested as the Statute mentions, or that he can allow it to remain at call without interest, as he may elect.

219. Practically it is invested by you with other funds, I suppose?—It is; of that 100,000 *l.* mentioned, about 19,000 *l.* only is specifically invested; the other 81,000 *l.* is nominally idle in the governors' hands, but really producing interest to the office.

220. For all purposes you only keep a general balance, having a power to sell at any time?—Yes.

221. Will you state to the Committee any suggestion generally that occurs to you for the alteration of the Act, and for remedying these complaints of the clergy?—If I may say so, I would rather hear what objections are taken by other witnesses against the Act, and then be called again.

Mr. *Beresford Hope.*

222. I would call your attention to Section 8, which says, "Within three months a surveyor or surveyors shall be appointed in each diocese." There is no regulation under this Act, and there seems to be no customary rule by which the number of surveyors is fixed?—There is not any rule; sometimes there are a great many, as in the diocese of Exeter, or there is only one, as in the diocese of Canterbury at the present moment.

223. I observe that there is only one in the diocese of Winchester, which is even a stronger case than that of Canterbury?—It is.

224. It is simply in the breast then, of the meeting, to say how many there shall be?—It is.

225. Is there any qualification for a surveyor under

Mr. *Beresford Hope*—continued.

under this Act, or is it in the breast also, of the electors, to decide who is a fit person to be so chosen?—That is also within their decision.

226. Practically speaking, looking over these cases, I apprehend that all the gentlemen elected are what are currently and commonly known as architects?—Most of them are so, but some are land agents.

227. Most of them are architects under the usual definition of the term, supplying both the practical and the ornamental details of a building?—They are so.

228. There is no guiding rule, then, to determine who the surveyor shall be under this Act?—Not any; that is left to the electors to decide.

229. Does that involve, in the case of a diocese like Canterbury or Winchester, where only one surveyor is elected, a heavier charge on the clergyman in the way of travelling expenses as regards the surveyor?—It would do so to some extent; but I think the great disadvantage attendant upon only one surveyor is the delay that must necessarily occur connected with the time of making the survey and the giving of the certificates.

230. Under Section 10 it is provided that the surveyor shall be paid according to a rate of charge; and the travelling expenses of a surveyor form an item of it?—They do so; but I think the surveyor would, generally speaking, say, "I shall be round at such a time, and you must wait till then," in order to keep down his travelling expenses; making, in fact, a kind of circuit.

231. Then the poor clergymen must pay either in malt or in meal, in either having to wait or else be subjected to a large expense; I observe that in the diocese of Winchester, the gentleman (no doubt a very competent man) lives in Buckingham-street; he might be called in for one of the parishes the churches of which we can see from this window, or he might be called in for a church in the Isle of Wight; that would make a considerable difference in the expense, would it not?—No doubt.

232. Do you think that it would be an improvement in the Act if a certain area were to be laid down as the maximum for one surveyor to take charge of?—If I gave my own opinion, I should leave it quite an open question; because by this statute you are deprived of the services of patron's land agents, men of extremely good experience, and whose services would probably cost nothing; but the clergy cannot take advantage of them.

233. Do you think it is desirable that the definition of a "surveyor" under this Act should be applicable to two perfectly distinct classes of professional men; namely, land agents, and educated architects?—Not quite.

234. Would not the suggestion which you have now thrown out be open to that objection?—No, I think not.

235. Will you explain why you think so?—I think that it should be either a land agent or architect; in some cases you really want a land agent.

236. That is my question, whether you would think it desirable to include under Section 8, as qualified persons, members of two perfectly distinct professions; a land agent is a member of one profession, and an architect is a member of another profession; what can the circumstances in England be that would render members of two perfectly distinct professions equally eligible for the same office?—I think there is greater latitude wanted than this statute allows; where you have a large glebe to inspect for dilapidation, I should choose a different agent for the purpose than if I had merely a parsonage house to examine.

Mr. *Beresford Hope*—continued.

237. Might it not be desirable that instead of each diocese being compelled to elect a certain number of obligatory surveyors, they should rather have a number of gentlemen qualified to act as surveyors, giving the choice to the incumbent to take which he liked; when it was a question of glebe, to take a land agent, and when it was a question of building, to take an architect?—I think so; I think that it would be a great improvement.

238. So that, in short, instead of the surveyors being officers, they should be rather persons qualified to act under the statute?—I think so.

239. Passing now to Section 11; is that an absolute prohibition of the surveyor under this Act, supposing him to be an architect, being employed at the usual five per cent. rate to carry out the work?—It has not been so construed; because cases have come before me in which a diocesan surveyor, so called under the statute, has charged a commission as architect for superintending the works.

240. On the invitation of the clergyman?—Yes, and with full knowledge, he has paid the amount.

241. Then Section 11 is not intended to prohibit the architect from acting, but is intended to protect the incumbent from the surveyor claiming the work?—In spirit it appears to me to amount to a prohibition. It says that he is not "to be beneficially interested directly or indirectly by himself, or by any partner or otherwise in any work or contract to be executed or entered into."

242. Then do I gather that your preceding answer implies that that section has been habitually violated?—I believe I am right in stating that some of the surveyors deem themselves perfectly justified in charging a commission, and that others do not think themselves justified in doing so.

243. Do you mean if they are employed subsequently?—No, at the time.

244. What the surveyor has to do is to send in a written report of what is wanted, is it not?—Yes.

245 Is that simply a written report, or do plans and specifications accompany it?—Plans would not be necessary, but a specification would accompany the report; particulars of the works to be done are required to be given by the surveyor.

246. There are two classes of reports that architects send in; one is a sort of general essay on what is wanted, and the other is a document sufficient for the builder to tender upon; which is the form that the report takes?—The reports that I have seen take the latter form sufficient for the builder to tender upon; and I think the surveyors who come before you, if you call any, will tell you that that has been their general principle. Clause 15 says that the surveyor shall report "what works are so needed, specifying the same in detail." He estimates the probable cost and

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and the time, or times, at which the work should be done.

Mr. *Dodds.*

247. It does not necessarily involve plans?—No, not necessarily.

Mr. *Beresford Hope.*

248. I am talking rather from the architectural side, upon which I have had to my cost a good deal of experience. A report, when it goes into detail, is an incomplete document, unless it has certain plans and sections. How, according to the ordinary practice of the architectural business, do you work Section 11 and Section 15 together; if the gentleman who acts as architect sends in, according to the ordinary rule of the architectural profession, a report, but does not send or is precluded from sending in plans, does not that involve the clergyman in a double expense, inasmuch as he has three-fourths of his architect's work provided by the surveyor, but he has not the remaining fourth which enables him really to carry the thing out, in the shape of the requisite plans?—I do not think that he would require plans for repairs only.

249. In short, Section 11 is ambiguous?—It is ambiguous.

250. Some surveyors consider that the detailed report which Section 15 demands is paid for according to the rate of charges specified in Section 10; and others consider that they have a further claim to an architect's ordinary per-centage; is not that so?—That is so; but in the cases where Queen Anne's Bounty has lent the amount, the Board have always refused to recognise that professional charge by an architect.

251. Then you consider that there is a practical grievance on the part of clergymen arising from different ideas of professional etiquette existing on the part of different surveyors?—I think so; and in that respect I think some central authority would have been very desirable to say what should or should not be uniformally observed.

252. I observe that this green book, which you have handed in, is a list of an association, and that they state that the general object of the association is to promote uniformity of practice in carrying out the Act. I see the names of some very honourable gentlemen, some of whom are friends of my own, upon that list, but I ask you whether this association has been formed in concert with, or independently of, the Queen Anne's Bounty Board, acting in the spirit that you have just laid down?—Quite independently of Queen Anne's Bounty Board.

253. How long has this association existed?—It was called into existence immediately after the passing of the Act. The first meeting was held at the office of Queen Anne's Bounty, that is the only meeting which was so held, and at that meeting I was allowed to be present. I have not attended any of the meetings since, and I know nothing of the character of the institution since that date.

254. I observe that on the last page of this paragraph, they say, "The surveyors marked with an asterisk have become members of the Ecclesiastical Surveyors' Association;" and I observe that of all the 53 gentlemen, certainly only seven or eight are not members of this association. Can you account for the anomaly of the association having existed five years for the purpose of producing uniformity in practice, and yet, according to your present statement, that uniformity not existing?—Yes, I could account for it in this way: there is no absolute control over the members. They meet to talk over matters, but with no power to compel uniformity.

Mr. *Beresford Hope*—continued.

255. As far as your knowledge goes, there is no honourable or tacit understanding among the members of this association that they shall act according to some voluntary bye-law of their own?—I am not aware of any such binding bye-law.

256. Then, according to your own experience, the society is a failure?—One member of it, within a short time, told me that he thought that there should be some Board or recognised central authority that would give directions on matters of doubt and difficulty.

257. Then, in short, the association, although it is to promote uniformity of practice in carrying out the Act, from its being a voluntary, and not a formal association, has not the power to carry out its own intentions?—I think that is so.

258. Your own experience then is, that the practice of the Act has been very various in various directions?—It has been very various in the different dioceses, and it may vary from time to time in the same diocese according to the surveyor who is in office.

259. In a diocese where there are several surveyors, you may find one rule in force in one part of the diocese, and another rule in another part?—That is quite possible, but it is not very probable.

260. I observe that in the diocese of Bath and Wells there are several surveyors, all of whom act for the entire diocese; in the diocese of Exeter or Ely, on the contrary, there are several surveyors, each of whom has his separate district; does that imply that any incumbent in the diocese of Bath and Wells, may, at his pleasure, call in which of the three surveyors he prefers?—I think not, but I cannot give an accurate answer to that question; it is a matter of arrangement between themselves, I believe.

261. You informed the Committee at the beginning of your evidence, that the poorer the living was, the greater difficulty it had in obtaining assistance from Queen Anne's Bounty; that may be very good financially, but is it not, morally speaking, very hard?—That is as to loans, but it is just the opposite with regard to gifts. I think the Committee will see readily enough, that when you are lending money, you must look first to the question of security.

262. How far is the income of the living itself an absolute security; can you seize that as first creditor?—Yes, after providing for the necessary repairs of the house, and the curate's stipend, presuming the incumbent to be non-resident, or to do his own duty under sequestration.

263. When the incumbent is resident, you have no lien over the income of the living?—By sequestration, yes, to the full extent of the difference between his stipend and the value of the living.

264. Do you think that it would be an improvement in the law if, in order to facilitate loans, an absolute lien were given on the income of the living?—I think the Board have that already; they have priority over all other creditors.

265. Subject

Mr. *Dodds.*

265. Subject always to the cost of providing for the cure of souls?—Yes, and the amount of that provision depends upon the statute of 1 Vict. c. 106, regulated by population.

Mr. *Beresford Hope.*

266. Do you not think that it would be, generally speaking, an advantage if, without going into details, the system of Queen Anne's Bounty were so far relaxed, and at the same time the operation of borrowing so far encouraged, that ultimately the Dilapidations Act might be worked in the way of a sort of income tax upon the clergy, so that incumbent B. might come in before the whole debt of incumbent A. was paid off, and then he would have to pay perhaps 2 *d.* in the pound, whereas his predecessor had only to pay 1 *d.*, there being a continual variable deduction from the living towards a sort of general fund for all England, out of which the parsonage houses should be currently kept in repair?—I think that a plan of that kind would be quite capable of being worked out, and satisfactorily so.

267. And you think that Queen Anne's Bounty would form the nucleus of a public department to promote such a scheme?—Yes, I think it might be made quite useful in that way.

268. You think that there would be in Queen Anne's Bounty Office the elements of such a system, though not perhaps with your present staff and machinery?—Yes, there is a very good board, which is the first point, a board in which the lay members, as well as the clergy, take a great interest.

269. And, in fact, you think that the dilapidations difficulty might be got over in that way by a system of insurance over the country, which should take the shape of a sort of income tax, varying according to the circumstances of each living?—Yes, and the term dilapidations, in the light in which a clergyman looks at it, altogether got rid of; so that he would take the house as he found it.

270. Coming back to the question of surveyors, how far do you think it would be allowable to permit a clergyman to call in some architect of well-known eminence (such as, for instance, Sir Gilbert Scott, or Mr. Barry) if he pleased, and to let such an architect carry out the whole work over the head of the diocesan surveyor?—I am, personally, quite in favour of that freedom of choice.

271. And that would work in, would it not, with the idea, which I threw out, that the name of surveyor, instead of implying an office, should imply a qualification?—Exactly.

Mr. *Dodds.*

272. Have you any definition of the word surveyor, as used in the Dilapidations Act, that is to say, of the class of persons who are supposed to be qualified to be appointed to the office?—There is no definition given in the Act. It depends upon the number of the candidates, and upon the choice made at the time of the election. Some may be land agents strictly speaking, and others may be architects.

273. I understood you to say that there is little difficulty about employing land agents in certain cases?—No, I think not; I think that in some cases a land agent, commonly so called, would be a better surveyor to employ for a particular business than, perhaps, a professional architect or a builder.

Mr. *Dodds*—continued.

274. I gathered from an answer which you gave to the honourable Member who has just been examining you, that land agents were excluded in some way?—No; they are not excluded.

275. In your experience, I have no doubt that you have found that in many cases land agents are the very best men to carry out repairs of this kind?—Yes, I think so.

276. They are able to prepare plans and, in fact, to do everything that is necessary?—Quite so.

277. And to do that at a cost comparatively small, as against what would be charged by an ordinary architect?—Yes, I think so; with regard to farm buildings and glebes generally.

278. And the repairs of parsonage houses?—And the repairs of parsonage houses. There is very little difference between them.

279. Referring to 34 & 35 Vict. c. 34, s. 11, you consider that a surveyor who has made a report under this Act, is interested in a work or contract merely by superintending its execution and receiving a commission for it?—No; I think legally that the meaning of it is that he should be in receipt of some profit from the actual work itself; but I do not think him entitled to charge a commission beyond his fees.

280. Turning to Clause 15, the report is to set forth what works are needed, and to specify the same in detail; I apprehend that in many cases the best mode of specifying such matters in detail would be to supply plans?—Where plans are necessary; but they are not commonly wanted for these dilapidation matters.

281. But still, in cases where they are required, they would probably come under the words "specification in detail" in the section?—I think so; I think that where plans are required they are included in those words.

282. Do the words seem to you to be large enough to cover that?—I think so.

Mr. *Monk.*

283. Do you think it is desirable that the surveyors should be paid by salary?—I do not.

284. You approve of the present mode of paying them by fees?—Yes; upon the whole, I think that it is the best plan.

285. Do you think that it is desirable that there should be a uniform table of fees for the whole country?—I do not.

286. Will you give your reasons for that?—They are based upon the different scales of fees which have come before me; in some parts of the country they appear to be able to do the work for far less than they can in other parts.

287. Can you tell me whether Queen Anne's Bounty has refused to make loans in any cases?—Yes, in a good many cases under the Dilapidations Act.

288. Were those refusals always based on the insufficiency of the value of the livings?—Not always.

289. Can you state any other reasons?—In cases of exchange of benefices, where one incumbent has exchanged with another, making the arrangement that each would take the other's place as he found it, then the surveyor would come in under the statute, and there would be an assessment in each place; at one place possibly

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the amount assessed would be very small, and the incumbent would pay that amount out of his own pocket, and say nothing about it; in the other case, the amount being large, the incumbent would have sought a loan from the Board, but directly it transpired that it was a case of exchange the board have declined to grant the loan.

290. Do you know of any instances in which an incumbent, who has been an incumbent for 10 or 20 years, has obtained a loan from Queen Anne's Bounty under the Dilapidations Act, and immediately afterwards, or shortly afterwards, has resigned his living?—Such cases have come before the Board.

291. Do you not think that that is a great hardship upon the successor of that incumbent in the benefice?—I thought that it would be so felt in the year 1872, and for that purpose I was very glad when a power was given in the Act of 1872 to extend the term of repayment when a gentleman succeeded to a living under those circumstances, and complained that he felt the living very much burdened with the charge that his predecessor had put upon it just before he retired.

292. Practically there is nothing to prevent an incumbent occupying a benefice for 20 or 30 years without doing any substantial repairs, obtaining a grant from Queen Anne's Bounty, which will constitute a lien upon the living, and then resigning that living and escaping altogether without paying any dilapidations?—The Act is capable of being worked in that way.

293. Have you yourself any doubt as to the interpretation of Clause 11, to which the honourable Member for the University of Cambridge has called your attention, viz., that a surveyor is not entitled to receive any commission beyond the fees?—I myself have no doubt about it; so far as the clause may apply, but there is also Clause 10.

294. Are the governors fortified by any legal opinion to that effect?—They have not taken any opinion, as they did not think it necessary.

Mr. *Gregory.*

295. The money to be lent by Queen Anne's Bounty is lent upon the final report of the surveyor as to what is necessary, is it not?—It is.

296. And on receiving that loan it is incumbent upon the clergyman to do those repairs, is it not?—It is incumbent upon him to do the repairs whether he obtains the loan or not.

297. But the liability is upon him, is it not?—That is so.

298. And not upon Queen Anne's Bounty; nor are they bound to see to the proper application of that loan?—No, the money remains in the office until the certificate of the surveyor is received directing the payment of it to A. B.

299. The purport of your answer to the honourable Member, as I understand, is that an incumbent may get a loan from Queen Anne's Bounty upon the report of a surveyor, and that all the security for his performing the works in respect of that loan is his personal security; the duty of executing those repairs is cast upon him, is it not?—The duty of entering into the contract is cast upon him; but very often they have asked me to enter into the contract, the money being at the office; and on behalf of the Board I have so entered into the contract.

Mr. *Gregory*—continued.

300. But at present the incumbent, supposing him to be a man of straw, or a man of want of principle, may, having borrowed the money from Queen Anne's Bounty, evade the liability involved in that loan, may he not?—He passes it on with the living; he leaves the living subject to the loan, and escapes the liability.

301. And it may be that he has not done the repairs?—I scarcely see how that could happen.

302. The loan is made upon the security of the living, is it not?—Yes, and the money remains in the hands of Queen Anne's Bounty until the repairs are performed.

303. It is not actually advanced?—No, it is not paid out.

304. You stated, did you not, that the surveyor's charges under the Act averaged about 12 *l.*?—That is so in the cases that have come before the Board.

305. I presume that that includes the surveyor's preliminary report, the general superintendence of the work, and the final report that the work has been properly performed?—It does.

306. You say that the incumbent's life is an element in the advance made to him?—It is not an element in the advance made to him, but it is an element of consideration with the Board whether they shall make the advance or refuse it.

307. If it is to be secured on the living, I hardly understand how the age of the incumbent can enter into the question?—To meet the objection which it was foreseen would be made to the operation of the Act if the Board freely lent money to all aged incumbents at the present day; so that as soon as their livings were vacated and succeeded to by younger men, they would find the benefices very much burdened by the loans put upon them for dilapidations.

308. But those loans were necessary for the maintenance of the buildings?—No doubt; but the board could not find authority in the Statute enabling them to lend freely to every one who wished to borrow, and charging it upon the benefice, instead of doing the repairs out of his own pocket; the governors may lend such sum as the incumbent may be unable to recover from his predecessor; that is the principle with regard to the cases where a vacancy occurs; and applying that principle to the earlier cases where the inspection is made on request, the governors became very unwilling lenders, and they only lent in a very few cases. Section 17 runs thus: "It shall be lawful for the incumbent to borrow, and for the governors, if they shall think fit, upon his request and with the consent of the bishop and patron, to lend upon the security of the possessions of the benefice, the whole or any part of the sum stated in the final report as the cost of the works." It would be a building loan, I think; but the Board felt that, as they had the opportunity of either doing it or not, they should not lend to the present incumbent, who might have been there for 40 years, and possibly done nothing during the time, or who might even have fairly maintained the works but still found himself assessed at 200 *l.* or 300 *l.* for dilapidations on the eve of his death, or perhaps of his wish to retire under the Superannuation Act. The Board felt that they were not entitled to lend to such gentlemen, because they had been in receipt of the income for a long period, and ought out

of

Mr. *Gregory*—continued.

of that income either to have done the repairs or to have saved for them.

309. Then you consider an aged incumbent in fact in default?—Not in default, but answerable for the dilapidations that may be found to be due from him whenever he calls in a surveyor on his own request, or when the surveyor may come in after his death.

310. But that is the case with every incumbent, is it not?—It is so.

311. Then what is the distinction between an aged incumbent and a younger incumbent?—Just this; that when a younger incumbent is in possession, he may be expected to live long enough to pay the debt off.

312. But the debt is on the living and not on the incumbent?—But repayment comes out of the annual income of the individual.

313. But if it is a proper expenditure the successor has the benefit of it, has he not?—But repairs wear out, and that is another element in fixing the terms of the loan. The Board have said from time to time: "We lend for repairs for 5, 10, or 15 years, because in that time the work will be nearly all exhausted; but for a new building the period is 31 years."

314. Then the question of life will hardly affect that?—No.

315. You say that the money is invested by the Governors of Queen Anne's Bounty for their own benefit, in fact?—They are bankers, practically speaking.

316. There is no power, is there, of placing the money out to a deposit account?—There is no power to do that.

317. Supposing that a gentleman had 300 *l.* or 400 *l.* in your hands, it might be a convenience to him if that was placed on deposit?—The Board would not do that; they would say: "We will put it in the funds and accumulate the dividends," and that, as I found by careful computation, was not really worth doing with small sums for short periods.

318. Should you have any objection to applying the principle which is now adopted with respect to funds which are deposited in the Court of Chancery; that is to say, that the party, at his option, should have the money carried to a deposit account?—I should see no objection to it; but it must be accompanied by a scale of fees for carrying the work on; and as fees are not popular, I think, the present plan might be retained; it seems to hurt no one, and it meets the expenses of working the Act.

319. With respect to the repairs required by the surveyor, are they generally within the scope of Wise *v.* Metcalfe?—They have not always been so, but generally speaking they are; I have heard of cases where I think they have gone widely beyond that case; for instance, where buildings have been constructed of one material, and the surveyor may have required them to be pulled down and reconstructed in another material.

320. They have required, in fact, more than good and substantial repair and rebuilding when necessary?—Yes.

321. And that is of course a proportionate hardship upon the incumbent?—It is.

Mr. *Walter*.

322. What is the remedy in such cases?—I am afraid that it comes under the class of grievances without a remedy.

Mr. *Walter*—continued.

323. Do you not think that there should be some legal definition of what is meant by dilapidations; is there any word more open to ambiguous and various constructions than the word "dilapidations?"—I do not think that it is a difficult word to determine, according to a surveyor's knowledge; the only point upon which I have heard them differ to any sensible extent was as to the gradual decay that might be going on.

324. Would dry-rot come under the definition?—That would be a dilapidation.

325. In the case of a new parsonage-house built by a clergyman at his own expense, would his expenditure be taken into account at all at the end of his incumbency, supposing that he lived for 30 or 40 years?—Not at all.

326. Do you think that he ought to have any consideration shown on that account?—I think that it would be only a proper act of consideration to do so.

327. Have you heard of any cases where clergymen have complained, after building parsonages at their own expense, that they are still apprehensive of having great charges thrown upon their families when they die, from want of consideration?—I have heard of such cases, and that is an argument which I have submitted to to the Board why the loan should be granted to the applicant.

328. Would a loan meet the case?—Where he has called in a surveyor to ascertain his present dilapidations, a loan would meet it; and in two or three cases it has been so met.

329. It would not meet the case of charge being thrown upon his executors and his family to pay for dilapidations upon the very building upon the erection of which he has expended, perhaps, a considerable portion of his fortune?—Perhaps not entirely; but, instead of having to pay it, perhaps this year or next year, when he may die, it is put as a burden upon the living for 10 or 15 years to come. It is a mitigation.

330. Do you not think that it would be better in the interests of all parties if, instead of an uncertain inspection by a surveyor at uncertain intervals, and the constant apprehension on the part of the clergyman of his family being called upon to pay a large sum for dilapidations, a system of insurance were adopted at the commencement of his incumbency, and, the state of the buildings being taken into account, a proportionate per-centage or deduction were made upon his living in order to meet any repairs that might become necessary during his incumbency?—I think that it would be a very great improvement.

331. Supposing that his parsonage were valued at 2,000 *l.* as being in a fair state of repair, might not a small sum be deducted annually from his income, so that he should be freed entirely from any future charge?—I think so.

332. Do you not conceive that a plan based upon some such system as that might be carried out, being much cheaper in working, and much more fair to himself and his family, and to his successor?—Yes, I think that such a plan could be prepared, and that it would probably be found to work, botn in principle and in detail, satisfactorily to the clergy, and also to the patrons.

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Mr. *Walter*—continued.

333. The patron at present, I understand, has no voice in the matter?—He has the right to lodge a complaint in case of waste, but he is not represented by a surveyor.

334. I presume that a considerable portion of the money expended on dilapidations does not come under your notice at all?—Very large sums do not come under our notice.

335. Have you any idea what proportion they bear to the total amount?—I have not.

336. Are there any records kept which are accessible to show what is the average annual amount of expenditure on dilapidations, and what proportion it bears to the estimated value of the buildings?—No, I never saw any such record. We have returns which would help to give some idea as to a number of cases; because when an application is made for a loan, the Board now inquire, "What sum have you laid out in repairs during the last three years?"

337. I presume that the rule which is applied to the clergy with regard to dilapidations, is very much stricter and of a different kind from that which is applied by landlords and agents to tenants who are required to keep their farms in what is called tenantable repair?—No, I do not think that it is.

338. Do you know of any cases where tenants have been called upon to pay anything like the amount of dilapidations for their buildings that the clergy are called upon to pay?—I have heard of a case where a tenant has been liable to pay less than the incumbent. Answering the question in the abstract, I do not think that an incumbent ought to be considered worse off than a tenant under a lease.

339. But there is no general complaint in the country that the tenants are excessively mulcted for their dilapidations at the end of their leases?—Not at all.

340. Has your attention been called to the report of a meeting, I think in Shropshire, in which it is stated by a right reverend prelate, that it has been shown that every five years, under the Dilapidations Act, in the diocese of Lincoln, the fees were 33,165 *l.*; and for the whole Church of England, 360,000 *l.*?—No; I have not seen that.

341. Can you give me any idea whether that is correct or not?—That must be inaccurate, I think.

342. Can you suggest any explanation of a statement of that kind?—Not any.

Mr. *Freshfield.*

343. I think that it about tallies with the amount which you say has been lent?—Yes, I think it is a wrong report altogether. It means the sum that has been received.

Mr. *Walter.*

344. Then that would mean so much of the sum for dilapidations as had passed through your office?—That is so, I think. The 30,000 *l.* would be the average amount of fees for the whole country.

Mr. *Dodds.*

345. Under the Dilapidations Act?—Under the Dilapidations Act.

Mr. *Freshfield.*

346. Have you any record or any information as to the number of parsonages and buildings which have been surveyed under the 12th section of this Act?—Not compiled. There was a partial return made to Convocation of about half the archdeaconries in the Province of Canterbury, which I could put in if the Committee desire it.

Mr. *Freshfield*—continued.

347. I suppose that it would be a very large proportion of the whole, would it not?—No, not under Section 12. In some dioceses the bishops encouraged surveys, and a great many surveys ensued; but in other dioceses the Act has been very little taken advantage of.

Lord *George Cavendish.*

348. A case which has been sent to me (not at all in reference to the sitting of this Committee) from a clergyman, who states that he entered upon his living rather more than a year since, and began to repair it with the money allowed under the Dilapidations Act, namely, 60 *l.*; that after having spent more than half that sum he found that it was money thrown away, and was advised by his neighbours not to proceed with it, but to ask the opinion of some competent surveyor; that this competent surveyor says that to put the rectory house into a state of tenantable and substantial repair, that is to say, to do what is positively required to be done, would entail an outlay of very little short of 500 *l.*, besides the repairs wanted for out-buildings and garden walls. What amount of repairs is the surveyor required to certify that there should be this extraordinary difference?—I cannot at all explain such a case as that.

349. Would he not be called upon to certify that the house should be put into a state of tenantable and substantial repair?—Substantial repair, yes.

350. And the last incumbent would be liable for that, would he not?—He would be liable for the amount of the money mentioned; the 60 *l.* only.

*Chairman.*

351. With reference to the question of the noble Lord, the amount is entirely in the discretion of the surveyor, according to the view which he takes, is it not?—Quite so.

352. In this case, the new incumbent would have had no voice to have himself represented what he considered the amount of the repairs?—Yes; he can enter an objection within a month, and then, as I have before mentioned, the bishop may appoint another surveyor.

353. Still he could have appointed no surveyor practically on his own part to insist upon anything, could he?—Not at all.

354. As regards the suggestion made by the honourable Member for Berkshire, that you never hear tenants complaining, they have the advantage of appointing their own surveyors, and they have the right to appeal if they do not get his views carried out, have they not?—That is so in ordinary tenancies.

355. If an ordinary lessee is called upon to pay more than his surveyor says he is liable to pay, he has the common law courts of the country to appeal to, has he not?—Yes.

356. Is there any power for a bishop to grant a faculty to remove buildings from a glebe?—Yes, they have the power; and they have lately reduced the fees, so that the faculties are being more frequently applied for than they used to be, in

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in consequence, I think, of the passing of the Act of 1871. They found a great many old tithe barns, which were no longer necessary or useful.

357. The bishop can grant such a faculty, with the assent of the patron, upon the application of the incumbent, can he not?—On the application of the incumbent; and I think without the consent of the patron, though notice has to given to the patron and parishioners on the church doors.

358. In the case of a wealthy incumbent who chose to build stables and coach-houses, and greenhouses on the benefice, could the bishop grant a faculty to have them taken down?—The greenhouses would probably be only a fixture.

359. Assuming that they were substantial buildings, buildings of luxury, and that the new incumbent wished to be relieved from the obligations which the keeping of them up would entail upon him, could the bishop grant a faculty to have them removed?—He could do so. Then again, there is the Section 71 of this Act, which has been used to some extent. There is a double power now of getting rid of unnecessary buildings.

360. You think that with regard to old buildings that existed under the old law, he could do it without the consent of the patron?—That is my impression.

361. Have you any instances of making loans, or, in cases of dilapidations generally, where the timber on the glebe has been taken into account as an allowance to the party obliged to do the repairs?—Yes; under Gilbert's Act.

362. But I mean under the Act of 1871?—I recollect one or two cases in which it was claimed as a set-off.

*Chairman*—continued.

363. Have you had instances where roofs have been constructed of deal or elm, and the surveyor valuing the dilapidations has required them to be constructed of oak?—Not within my own knowledge; but I have heard of more substantial repairs being required than the original structure warranted.

Mr. *Dodds.*

364. In such cases I daresay you would very readily give power to borrow the additional money?—This Act says that the sum to be lent shall be only the amount specified by the surveyor; so that if the new incumbent receives from his predecessor the amount assessed, the borrowing power is exhausted, and the new incumbent then has to pay all the difference. In the case alluded to by the noble Lord, he cannot borrow it, because it is for repairs only. It is an error in the estimate and it cannot be met. Those are cases of difficulty which, I think, it would be desirable should be met.

Mr. *Gregory.*

365. The appeal is to the bishop under this Act, is it not?—It is.

366. Do you know any instance of the bishops having dealt with such appeals?—Yes.

367. By what machinery have they determined such appeals?—By a reference to another surveyor and also to counsel. There have been some points of law upon which they wanted advice and they have referred to counsel.

The Reverend Canon DAVID WILLIAMS, called in; and Examined.

Rev. Canon *D. Williams.*

*Chairman.*

368. I THINK you are at present the Incumbent of Castle Rectory, near Welshpool?—I am.

369. Were you formerly Rector of Nannerch, in Flintshire?—Yes.

370. I believe you are conversant with the question of dilapidations, both as regards the working under the old law and the working under the present law?—I have taken considerable interest in it all my life.

371. I think I may ask you also whether you are not in intimate relations with nearly all the clergy in your diocese, which is that of St. Asaph?—I am, for special reasons.

372. You are, I believe, a Member of Concovation?—I am, and have been for the last 15 years.

373. Have you taken special interest in the working of the Dilapidations Act of 1871?—I have ever since it came into operation, having had to deal with it myself.

374. Since the Act came into operation you have changed your living, have you not?—I have. I was one of the first to come under it in my own diocese.

375. And that, I suppose, induced you to look rather narrowly into what your obligations and rights under it were?—I was very much dissatisfied at the time with the working of it, and I have taken much more interest in it ever since.

376. Will you detail to the Committee some

*Chairman*—continued.

illustration of what occurred that made you take an interest in it?—The first thing to which I took exception was finding that there was really no appeal against the bishop. The final appeal is to him in disputes between one of the parties and the surveyor. I may as well state my own case. The dilapitations of the living that I vacated amounted to 120 *l.*; so that that was the charge against myself. I saw that there were items for which I was clearly not liable, and I may tell you what they were: they were sleeper walls under the dining-room, drawing-room, and library, which had never existed; the house had been built 70 years before, and there had never been any excavations and sleeper walls. The surveyor ordered me to build them, and I objected and appealed to the bishop within a month, according to the Act. I got an answer from the bishop's secretary by return of post, that he would attend to it; that the bishop had put the matter into his hands. He is registrar of the diocese and also secretary under the Act; three weeks afterwards I got another letter from him to ask me whether I prayed for a counsel's opinion or for a re-survey. I was not very perfectly acquainted with the Act itself at that time, but I thought it a monstrous hardship that there was not some power in the diocese itself that could deal with this question without going for a resurvey or for counsel's opinion, both of which would be very expensive, and would be at my expense.

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The whole item was only about 50 *s.*, I think, but I was determined to fight it out on principle, because I thought that it was a charge that ought not to have been made. After some little correspondence with the secretary, I told him to apply for counsel's opinion. The following November, the long vacation having intervened, I got a letter from him to say, "I have had opinion from counsel;" and he sends me the opinion; and it is dead in favour of Canon Williams on every single point, and the surveyor is all wrong.

Mr. *Dodds.*

377. Did I correctly understand you to say that the secretary gave you the option of having a re-survey?—I did not want a re-survey. It was simply the legality of the item that I objected to, and therefore counsels opinion was the right course for me to take.

378. It seems to me that the intention of the clause is, that upon certain questions of law, counsel shall be appealed to, and that upon certain other questions there shall be a second survey?—I chose counsel's opinion, because the re-survey would have been of no use to me; then I desired the secretary, by letter, to take it to the bishop, because I believe the bishop had power under the Act to draw his pen across the item that I objected to. When he took it to the bishop the bishop said: "No, I will not draw my pen across it; it is only a one-sided opinion, and I will not do it"; I had no remedy whatever against the bishop, though counsel's opinion was given in my favour. I was very much annoyed about this, and after one or two letters had passed between us, I said to the registrar, who is also the bishop's secretary, "Tell the bishop that if he does not sign it I will write a full statement of the case in the 'Times' newspaper; and also the next time Convocation meets I shall bring the conduct of my bishop as a personal gravamen before Convocation." The bishop got a good deal excited, from what I heard afterwards from the secretary, and he said, "Where is the report?" and drew his pen across it, and under pressure did all that I wanted him to do; that ought not to have been.

*Chairman.*

379. That opinion was taken by the bishop's secretary?—It was taken by the bishop's secretary officially under the Act, and at my expense, of course.

380. I believe before this valuation was made, you had yourself spent a considerable sum in dilapidations?—I had spent 1,000 *l.* upon these premises in improvement, and not in ornament.

381. Do you happen to know whether much litigation occurred under the old law in your diocese?—I have been in the habit of travelling about as secretary for the Society for the Propagation of the Gospel for 35 years in that diocese; and I was formerly, more than now, on terms of intimacy with nearly every clergyman in the diocese. There there has not been a single case in the diocese of Saint Asaph for 30 years in a court of law between the representatives of the outgoing and incoming incumbents. I have known cases where they have very nearly gone to law, but wiser counsels prevailed, and they settled the matter themselves. I have made it my business to ask solicitors lately whether they have ever known a case of litigation under the old Dilapidations Act, and the answer has invariably been, never.

*Chairman*—continued.

382. The matter was generally arranged by each party appointing somebody to act on their behalf?—Yes.

383. And, according to your experience, that was satisfactory?—It has always ended well.

384. Do you see any great advantage in the parochial clergy being entirely shut out from having any voice in taking care of their own money?—Do you mean lodging the money in Queen Anne's Bounty while the work is being done? I do not see any great disadvantage in it, because the greatest blot in the old law was, that the incumbent did not always spend the money that he got; I have known instances of an incumbent for 10 years of a living getting 180 *l.* for dilapidations, and not spending a penny of it; and there was a little difficulty in getting it from his representatives after his death, but still there was no loss.

385. I think you can give the Committee some information with regard to the number of cases under the different sections of the Act which have been brought into operation since the Act passed?—I have here a Paper which, perhaps, I have a right to use, but I cannot put it in because it is marked "Private and confidential"; it is a report of our committee; it is now really in the press, and it will be public property in the course of another month.

386. Will you state the number of vacancies, of individual applications, of sequestrations, and of cases of remonstrance by the patron?—At the end of the year answers had come from about half of the archdeacons of the Province of Canterbury, because being a Committee of the Convocation of Canterbury we had no right to deal with anything but that province. At Christmas there had been 1,102 surveys for dilapidations on vacancy of a benefice, because those are compulsory under the Act; there had been 267 voluntary surveys made on the request of the incumbent; there were 36 on the sequestration of the benefice; there were eight on the complaint of the patron; there were four on the complaint of the archdeacon; and four on complaint of the rural dean; making a total of 1,422. Out of those, you will observe that only 267 have gone under the Act voluntarily that we can find out.

387. Do you happen to know whether those voluntary applications were in the earlier part?—They were in the earlier part in my own diocese, of which I have most knowledge. Many of my friends intended to go under it, but they find it working so badly that they have declined to go under it. At the archdeacon's luncheon, after his visitation, one of the two clergymen that went under the Act voluntarily in our diocese got up and said that they were very sorry that they had done it.

388. Have there been complaints to your knowledge of a surveyor requiring more extended repairs than were considered to be strictly within the definition of dilapidations?—My own case is one.

389. Can you give the Committee any other case?—I know another case in which there is a grievance, I think, from more than one point of view. About the same time that I went to my

*Chairman*—continued.

my own living in Montgomeryshire, a neighbouring clergyman died. The surveyor came and sent in his report, and they objected to it. That was much the same kind of thing as in my own case; that is to say, he charged for paving the stable-yard, which never had been paved. There was a gate leading to the said yard which had always been an ordinary gate, but he ordered folding doors to be put up. The widow, poor woman, in great distress, wrote direct to the bishop (she was a personal friend of the bishop's) to ask his advice as to what was to be done. He wrote back to her very kindly, and said, "I will see to it." However, the next day there came a letter from the secretary to say, "The bishop has placed your letter in my hands, and I will attend to it." Three weeks afterwards she got the same sort of stereotyped letter as I got, saying, "Do you pray for counsel's opinion, or for a re-valuation?" At that time two or three of her family were around her; she, poor lady, was in a great distress about it (she is now dead), and they said, "Oh, mother, pay the money, and have done with it."

Mr. *Dodds.*

390. Can you give the Committee the amount of those items?—I cannot give the amounts of them, but they would be about 14 *l.* or 15 *l.*, I should say. Her son sent a cheque for the money, and they thought then she had done with it. Six months after that she got a letter from the registrar: "So-and-so dilapidations (the usual lawyer's way of making out a bill): To advising the bishop in this matter, two guineas." That happened in the next parish to my own, in Montgomeryshire, and all the advice that the secretary had given the bishop, that I am aware of, was instructing him to ask the lady whether she would have counsel's opinion or a re-valuation.

Mr. *Wait.*

391. I do not think you stated that you paid it in your own case?—I did not pay it, I refused to pay it.

Mr. *Beresford Hope.*

392. Was the two guineas' bill from the registrar sent in to you?—That is in his general bill.

*Chairman.*

393. Did you have in your own case any further bill sent in with regard to this matter?—That was when the Act was new, and no one understood the business.

394. Not even the attorneys?—The attorney certainly did not. After I had got the items struck out. I had to pay his bill, which was some 4 *l.* or 5 *l.*, besides the counsel's opinion, which was 10 guineas more (which I paid myself, so that I am a benefactor to the diocese); there was one bill by itself from the secretary, to say, "For correspondence with Mr. Aston." I do not blame Mr. Aston in the matter; but the surveyor had sent the certificate for me to get the money from Mr. Aston, under a wrong clause; and I had some correspondence with the secretary about it; and then there was another little bill, at the end, to say, "To extra correspondence in the matter of sending a certificate to Mr. Aston, 18 *s.*, which was caused entirely by their own blundering; I do not mean Mr. Aston's blundering, but the lawyers in the country.

*Chairman*—continued.

395. Do you know of an instance where the surveyor has insisted upon a different class of work being put up, or things restored as new?—I think the best thing that I can do is to read a letter which I received from a friend of mine, about a month ago. It used to be complained, under the old law, that new incumbents lost money by old incumbents dying insolvent; but here is the case of a person who died last Christmas leaving no assets under the new Act.

396. Do you know, from your consideration of the Act, whether there is any more advantage or power to an incoming rector to obtain his money under this Act than there was under the old Act?—He always got it from the representatives of his predecessor, without all this red-tapeism.

397. You think this red-tapeism is rather creating a difficulty than an advantage?—Ten times more difficulty, and then there is the expense. This was an instance of a living in Shropshire, given to my friend by Lord Powys; and it was found that the poor predecessor had died without leaving any effects. Mr. Jones and the surveyor estimated the dilapidations at 80 *l.* My friend did it all himself; he spent over 400 *l.* on the house, and put it in perfect order; but because he demurred to 30 *l.* in the surveyor's list of dilapidations, he was refused his certificate.

398. Until he got that certificate he could not get his money from Queen Anne's Bounty?—He has not had his certificate to this day. It is only 80 *l.*, which would be lodged in Queen Anne's Bounty; the other 320 *l.*, which he paid out of his own pocket, I suppose, he had not to go to Queen Anne's Bounty to invest. He says, "Everybody allows that I am right; even the bishop agrees that the surveyor is wrong, but, according to this modern law of the Medes and Persians, the surveyors decree must be carried out to the letter. Entrance gate condemned by surveyor, to be replaced by a new one; after a few repairs the old gate is made quite fit to do duty for another 10 years; surveyor informed of the fact, and reply was, 'A new wooden gate I have ordered, and, till a new gate is in the place, I shall refuse the certificate;' my squire has now bought the old gate, saying, it is good enough for him, if it is not good enough for the parson;" and there it is now, at the squire's lodge gate to the principal drive to his house.

Mr. *Dodds.*

399. The squire having supplied its place with a new one at the parsonage?—I do not know what he paid for it, but he paid a fair market value for it, and there it is at the squire's lodge at this moment; and that gentleman is rather particular too; he has a considerable amount of broad acres. Then there was an item "Wall around piece of glebe. I informed the surveyor that the piece of glebe in question was to be added to the churchyard, and that it would be useless to rebuild the old wall as he ordered, seeing that a wall of a different character would be required for the churchyard. The estimate for rebuilding this wall was 30 *l.* I absolutely refused to spend my money upon a wall that will

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have to be pulled down next year" (this letter was dated in November; I daresay by this time it is pulled down); "and although I had given way in the matter of the gate" (because, as I say, he got the value of the gate from the squire), "I am still refused the certificate." This was a man spending his own money.

*Chairman.*

400. I daresay there are several instances which have come to your own knowledge of the arbitrary conduct of parties having this power without an appeal?—That is the complaint all over our diocese; that will not only apply to our diocese, but it is a complaint that I hear everywhere. Since I moved for a Committee in Convocation, there are a great many clergymen all over the kingdom who think it right to air their grievances by writing to me about it; to that I have hundreds of letters on the subject, and all in the same spirit; all finding fault.

401. Your idea then is that, either in consequence of this action on the part of surveyors, or of the difficulties that the parochial clergy find in it, they have ceased to avail themselves of what was held out as a boon, by setting their house in order and getting immunity for five years?—I believe there have been no cases in the last year and a half in my diocese in which they have availed themselves of the Act.

402. Will you give the Committee some suggestions which you think would meet this difficulty; first, as regards the persons interested, should they have any power in the appointment of the surveyor?—I think decidedly they should, though I am against the principle of an open election for the appointment of surveyor. I have no objection whatever to the archdeacons and the rural deans meeting together and appointing a surveyor. I should rather of the two that they had the power of electing; but I think it necessary for the working of any new Act, that the clergy and parties interested should have a voice in the appointment of a surveyor for their own case.

403. Supposing that the idea of the honourable Member for the University of Cambridge were introduced, that is to say, that instead of electing a certain number of people as surveyors, the parochial clergy at the ruri-decanal meeting should fix upon, say 20 men of reputation in a diocese who would be qualified surveyors, do you think that that would be an improvement?—I think that it would be a very good plan indeed; but what I want is more than one absolute tyrant in the diocese.

404. Supposing that instead of having one or two surveyors, as there appear to be in this list which has been furnished to the Committee, there was a large number of generally qualified men acting as surveyors or land agents or architects, do you think that would be an improvement?—Yes. Let them be recognised by any official authority, such as the Governors of Queen Anne's Bounty, and then let the clergy select. Let the two parties, the outgoing incumbent and the new incumbent, agree to have one if possible; if not, let them each nominate his surveyor with an arbitrator in the background.

405. Would you go further than the honourable Member for the University of Cambridge, and say that the two parties interested should be

*Chairman*—continued.

at liberty to choose a man whose certificate was sufficient, if he was approved in the same way as the bishop could select a surveyor?—Decidedly.

406. That is to say, having some competent authority to give approval of his appointment, you would put the parochial clergy in the same position as the heads of the Church are in?—Yes.

407. The approval of Queen's Anne's Bounty Board you think would be sufficient, or would you suggest some local authority, like the rural dean or the chairman of the petty sessions?—I had, myself, rather that it should be in the hands of Queen's Anne's Bounty Board, because Queen Anne's Bounty is a much more active body than it used to be. More of the govenors attend the meetings than used to attend formerly, and every thing in detail is looked into.

408. And if each party choose one surveyor, and there was a difference, you think the Queen Anne's Bounty Board could settle the difference, or nominate an arbitrator between them?—I should be perfectly inclined to give the power of nominating the referee to Queen Anne's Bounty Board, though I do not know that it has been suggested to me until I heard the Member for Cambridge University mention it.

409. Do you think that there should be a well-defined distinction made in dilapidations, between the ordinary wear and tear and neglect in the nature of waste?—I believe that there should, and I believe that it can be done. I have here a paper put out by the Committee of Surveyors, to say that it cannot be done; but I do not quite agree with them upon that point.

410. You know, I dare say, that it has been defined under the Irish Act, called Napier's Act?—I am not acquainted with the Act clause by clause, but I know its contents pretty well.

411. Would your view be that the individuals should meet the dilapidations occasioned by waste or negligence, and that the wear or tear by time should be charged upon the living?—I think that the wear and tear by time should be charged upon the living; and that is the view of the Committee of Convocation which will be put out immediately after Easter. Perhaps I may, without a breach of confidence, go as far as that.

412. To make this Act, or any Act, work satisfactorily to the clergy, you think, do you not, that the one essential thing is a right to appeal?—Yes; but I want the right of appeal to some inexpensive court. If, however, the surveyor were appointed in the way I have just now indicated, I do not believe that there would be ever any occasion for appeal.

413. There being no litigation under the mode in which dilapidations were assessed before?—Quite so. One of those two cases which I have mentioned was a remarkable fact. About 20 years ago, I went with a friend of mine, who had taken possession of a little chapelry in his parish, and the endowment of it was two small farms. The representative of the late incumbent rather objected to repair those tenements, and my friend, who was not a man of business, asked me to go with him to his solicitors one day. I found, when he was talking to his solicitor, that his solicitor knew less than himself about it, which was very little, and I took the liberty of asking the solicitor a very impertinent question, whether he had ever had much experience of dilapidations? "Well,"

*Chairman*—continued.

"Well," he said, "to the credit of your cloth I do not think it at all impertinent, but I must answer you and say that I know nothing about it. I have never had a case of dilapidations in my life during the 25 years that I have been in practice, and I thank you very much for coming here to-day to instruct me."

414. As regards the question of expense, and at the same time looking to the substantial meeting of dilapidations, do you think that it could be worked in small localities by archdeacons and rural deans, instead of bishops and their registrars and secretaries?—I think so, in every locality, and that was the opinion of Convocation when they drafted the present Act of 1871 and put it in the hands of one of the hierarchy. I was not a member of the committee then; it is in the new Convocation that I am a member of the committee. They had put the archdeacon and the rural dean and a couple of laymen to settle all these disputes in every case. That was the view of Convocation, and that was the draft Bill which they put in the hands of, I will not say whom; but he altered it all, and put archbishops and bishops instead of archdeacons and rural deans in every one of the clauses of this Act of Parliament.

415. And that has given general dissatisfaction, you think?—More than anything else, I think.

416. If it was dealt with in small districts, like rural deaneries, the greater part of the expense would go, would it not?—We should not have all these secretaries to pay. I have here a case of very great hardship from the arbitrary conduct of a surveyor. An incumbent died about two years ago, and a surveyor was sent there, of course. He found out somewhere, nobody knows where, that there had been two cottages on what he thought was the glebe, which the oldest inhabitant had never heard of, and he put 100 *l.* upon that for the widow to build those two cottages.

417. Only finding the site?—He thought that he could see the site, but nobody else could. The lady was a person of means, it is true, but she resisted it and employed her solicitor to look it out, but nobody could make anything of it. Then they had to apply to the bishop's secretary, and they asked him to apply to the Copyhold and Inclosure Commissioners acting as Tithe Commissioners, to look into any documents in their office, under the Tithe Commutation Act, to see if they could see any terriers. No, they could see nothing, and upon further inquiries it was found that there had been two cottages, 150 years ago, built upon a common. The widow had to pay the bishop's secretary five guineas for conducting the correspondence with the Tithe Commissioners, and a very heavy bill to her own solicitor, which I have not been able to find out about; although, if I had had another day or two, I could have told you just what it cost. All that from the wilful obstinacy of the surveyor.

418. Then the bishop did not disallow this charge?—No, it has all been paid.

419. Has she had to pay the 100 *l.* too?—No, because the Tithe Commissioners decided that there was no existence of the cottages.

420. Do you know of any other case which you wish to lay before the Committee?—In another case, the surveyor ordered a stone wall to be built, and he would not sign the certificate until it was paid for; but upon further inquiries it was discovered that the wall never belonged to the rector at all, but that it was a hedge belonging to the farmer, and the farmer had pulled it down 40 years ago.

*Chairman*—continued.

Mr. *Dodds.*

421. Did that case also occur in the diocese of St. Asaph?—It did; it was a place within a mile and a half of where I lived 25 years of my life, so that I am well acquainted with the case.

Mr. *Monk.*

422. But that could never have arisen if there had been a terrier in the parish?—He would not listen to or look at the modern terrier. There have been terriers three or four times over in every parish of the diocese ever since Bishop Short had been Bishop of St. Asaph's.

423. But this fence did not appear in the terrier, did it?—No, but he discovered it in some old document.

*Chairman.*

424. I suppose that he was an archæologist?—Perhaps so.

Mr. *Walter.*

425. Is there no Statute of Limitations to the liability to dilapidations?—It appears not; at least there is not according to his idea.

*Chairman.*

426. Under 34 & 35 Vict. c. 43, s. 16, unless there is a remonstrance or objection lodged with the bishop within one month, the surveyor's report, both as to the work to be done and the time within which it is to be done, is absolutely binding and final at law, is it not?—You are out of court entirely.

427. There is no appeal at all, is there?—I believe not.

428. And if an objection is made, the only appeal is to the bishop whose officer the surveyor practically is; is not that so?—Yes, and he cannot deal with it after a month has elapsed.

429. Is there a general and widespread dissatisfaction on the part of the parochial clergy against the working of this Act?—To give you about the best evidence of that, I think that the question was well ventilated at the Stoke Congress, and I only heard of one clergyman who had the courage to stand up in defence of the Act.

Mr. *Wait.*

430. Did I rightly understand you to say that you had no objection to the original appointment of surveyors under Section 8?—Not if I could get more of them.

431. But you object to the mode of their appointment?—I do not object to it.

432. Your principal objection is to the mode of appeal, is it?—My principal objection is to the mode of appeal and to the power given to these men.

433. And you suggest, do you not, that two surveyors should be appointed with a referee?—Yes.

434. Do you not think that that would be, to say the least, a very much more expensive mode than the present?—It is the mode under the old law.

435. Possibly; but it involves, does it not, the appointment of three persons instead of one, as under

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Mr. *Wait*—continued.

under the present Act?—That would not often arise. I have known very few such cases in the diocese of St. Asaph for the last 40 years.

Mr. *Dodds.*

436. In your own case, you told us that the bishop, or rather the bishop's secretary, gave you the option of taking counsel's opinion or having a second survey; did you, in stating your objection to the bishop, set forth the grounds of your objection?—Fully.

437. I see, upon referring to the Act, that those objections must specify whether they are upon grounds of fact or of law?—I did state them. I told him what the items were; and that those were matters of construction.

438. Have you considered the 16th clause of the Act of 1871?—I have considered it generally.

439. The words are these: "The incumbent, or the sequestrator, if any, may, within one month after the sending the said copy, state, in writing, to the bishop, objections to the report, on any grounds of fact or law, and in such case, the bishop may, if he shall think fit, at the expense of the party objecting, direct a second report to be made by another surveyor, or take the opinion of counsel upon any question of law." Is that what you did?—That is what I did; they gave me the choice.

440. But were your objections objections of fact, or were they objections with reference to the law?—What I disputed was that the items which he ordered, and to which I demurred, were not legal demands upon me.

441. Then your objections were legal objections?—Yes.

442. And therefore the report of a second surveyor would not have assisted you at all, would it?—No, it would not. I stated distinctly that, to the report generally I did not object, except that there were items there which ought not to have been there.

*Chairman.*

443. You were fighting a principle?—Yes.

Mr. *Dodds.*

444. You mentioned sleeper walls; do you remember any other items that you objected to?—It is a very curious thing that he ordered ventilators to be put in each wall, to the drawing-room, dining-room, and library of the parsonage. But he said, "As this is for the benefit of the living, I order that the new rector shall pay for them." But the excavation and the sleeper walls he ordered me to pay for. I could not, myself, make out the difference between the excavations and the ventilators.

445. What was the total amount of the items that you objected to?—I think that it was about 2 *l.* 10 *s.* 3 *d.*

446. And for that you incurred the expense of 10 guineas for counsel's fees, and a bishop's secretary's bill of 4 *l.* or 5 *l.*?—Yes.

447. Was the secretary resident in London?—No, in St. Asaph's.

448. He was a solicitor, I suppose?—He was a solicitor, registrar of the diocese, the bishop's secretary, and secretary under the Act.

449. I understand that one of your great wishes is, that there should be either a right of appeal or a better tribunal to decide upon questions of this kind?—I want an inexpensive tribunal; I do not want the clergy to be ground down with the expensiveness of the present Act.

Mr. *Dodds*—continued.

Lord *George Cavendish.*

450. With regard to the dissatisfaction which you state exists, does that apply to the incumbent going out or to the incumbent coming in?—It seems to be in this singular predicament, that the Act does not give satisfaction to anybody.

451. I do not know whether you heard that case which I put to a former witness, in which a clergyman received 66 *l.*, under the Dilapidations Act; but on proceeding to do the repairs, he found that his money was thrown away; and upon applying to another very competent surveyor, he was informed that, to put the house in tenantable and substantial repair would require little short of 500 *l.* to be expended; do you think that such a case as that might be met in any way by giving more time for an appeal, and that a more thorough investigation should take place?—I think that the question may be left almost entirely to the surveyor. If a surveyor is a very good-natured and accommodating man, he would, probably, grant what is required, but he is not obliged to do so.

Sir *Sydney Waterlow.*

452. I think you stated just now that what you most desire is an easy and inexpensive mode of appeal in case of difference?—I meant with regard to the working of the Act generally.

453. Do you think that an appeal to two surveyors and a referee would be less expensive than the present mode of appeal to the bishop?—I think it would.

Mr. *Freshfield.*

454. Do you think that, at any rate, the bishop is a very improper person to appeal to?—Without speaking in the least disrespectfully of the bishops (I hope that will be understood), it is really not in their line of business.

455. Can the bishop have the practical knowledge which is necessary?—He cannot possibly have the practical knowledge which is necessary.

456. Do you believe that a case which was stated by him to counsel would be likely to be fairly and properly stated?—He would simply go to his secretary, who is a solicitor, and tell him to do it for him.

*Chairman.*

457. With reference to the Honourable Baronet's question whether it would be less expensive or not, it might be more satisfactory to the clergy to have a voice in the matter?—I am quite sure of it.

458. Practically speaking, they have none, have they, at the present moment as to either the amount or the time?—No; and the consequence is that they have no confidence in the carrying out of the Act.

Mr. *Cowper-Temple.*

459. Is the bishop in the habit of appointing, specially to guide him, a surveyor who charges for his professional duties?—No; we have had only one diocesan surveyor from the time when the Act came into operation. The bishop has no surveyor whom he can call upon privately.

The Reverend DAVID MOUNTFIELD, called in; and Examined.



*Chairman.*

460. YOU are the Rector of Newport, in Shropshire, are you not?—Yes.

461. That is in the diocese of Lichfield, I believe; have you heard the evidence of Canon Williams generally as to the working of the Act?—I have.

462. Do you, more or less, concur in certain of the views which he has stated?—Yes, on the whole.

463. Do you think that the clergy are anxious to have a voice in the appointment of the surveyors, and some power of appeal?—Yes.

464. Perhaps you are able to state to the Committee what the general complaints of the clergy are, and whether you know from your own knowledge that great discontent exists in your district about this Act?—Yes. The heavy fees first directed the attention of the clergy to the Act; they are exceedingly high. A per-centage is charged in our diocese by the surveyor, and I thought that it was a very bad principle; we thought that it was a violation of the spirit of the Act, though Mr. Aston thinks otherwise.

465. Do you mean a per-centage in addition to the fixed fees?—Yes, 1½ per cent. on the estimated cost of the work that is ordered.

466. There have been several meetings of the clergy, I think, in your district relative to this matter?—Yes.

467. And their objections have been stated fully and publicly?—Yes, very fully and publicly.

468. May the complaints which they make be classed under three heads; first, as to the principle of dilapidations; next as to the appointment of surveyor; and thirdly as to the absolute effect of the surveyor's report if not appealed against?—Yes. The second of those three heads would include the expense and delay of the present system.

468*. How many surveyors are there in your diocese?—There are three, one for each archdeaconry.

469. Do you know any instances in which the surveyor has arbitrarily refused to grant his certificate?—No.

470. You spoke of the question of delay; do you mean the time within which the repairs are to be carried out?—I mean the long time before we can get anything done by the surveyor, an inspection or certificate.

471. That is to say, you cannot fix a time for the surveyor to come?—In my own case I am now waiting for the surveyor's certificate. I have written to the surveyor again and again, and I have had no reply. I have taken notes of the correspondence in my own case. I am one of the few in the archdeaconry who applied to get a certificate for five years, because the inhabitants had bought large and expensive premises for me, and I thought that it was safer that I should do so.

472. Will you state to the Committee when you applied, and what the whole transaction has been?—I will.

Mr. *Walter.*

473. Was it in a town or in the country?—In a small town of between 3,000 and 4,000 inhabitants. They bought an unusually large rectory house, with stabling and grounds, and gave it to the living. It was an old mansion, and they gave 2,200 *l.* for it, the Ecclesiastical Commissioners helping them.

Mr. *Walter*—continued.

*Chairman.*

474. In consequence of that, you thought it prudent, on the whole, to call in the surveyor; will you state what occurred?—I first called him in on 23rd January 1873, in his private capacity, and again on 22nd June 1874; I wrote to him in November 1874, and informed him that all the repairs were finished, and that all the works which he required were executed. To that I got no reply.

475. He came in, and then made out a statement of repairs?—He came and approved of what we were doing.

476. Did you comply with that?—He came in, but I never had from him a statement.

Mr. *Monk.*

477. Did he not make a report?—No. The premises were bought by the Ecclesiastical Commissioners on the condition that we put them in full repair; and they authorised me to go on.

478. Then if I understand you rightly, the surveyor was not called in under the provisions of the Act?—I called him in, but he has not acted officially, and I went on and I told him that all the works were executed and the repairs finished. I wrote him in November 1874, and said that they were executed, but I got no reply. I wrote to him again, and told him that the Ecclesiastical Commissioners' architect was coming down on the 24th February 1875, and requested him to attend on the same day. Mr. Christian could not come, but Mr. Espinette came down; I asked him to meet the surveyor under the Dilapidations Act, and he did so.

Mr. *Wait.*

479. Then the diocesan surveyor did come?—Yes, he did, on 24th February 1875. The matter was speedily finished with the Ecclesiastical Commissioners; they asked for my certificate, and the builder's certificate, and they paid over the money on 11th March 1875.

Mr. *Monk.*

480. To whom was it paid?—To my builder. Mr. Espinette said that the thing was done well, and he was quite satisfied. That night he sent in his certificate to the Commissioners, and in less than a month the whole thing was finished. I wrote again in March, again in July, again in September of the same year to the diocesan surveyor, but I received no reply.

481. What did you write for?—I kept reminding him of the case; it was simply a business note of about four lines; "I beg to remind you of this case, and wish you would proceed with it."

482. Did you need a certificate?—Yes.

Mr. *Wait.*

483. He said that he was quite satisfied?—

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He said that he was quite satisfied; he quite concurred with the architect.

484. But he, up to this time, had withheld his certificate?—Yes. The Ecclesiastical Commissioners' architect and this surveyor, who is himself a builder, went over the premises.

Mr. *Monk.*

485. Did the bishop, at your request, order the surveyor to inspect the building?—Yes; I wrote to the bishop's secretary, and I told him that I wanted a survey under the section.

486. Did the bishop direct the surveyor to inspect the buildings?—Yes, and the surveyor informed me on 25th June 1874, that he had received directions, but I have never had a report. I wrote in March, again in July, and again in September 1875, but I received no reply. I wrote again in December, and I then had a reply, in which he said that he had been very much engaged, and that he would go into the matter shortly, but I have never heard from him since.

487. And you have not got your certificate?—No.

488. I believe that the immunity dates from the date of the certificate, does it not?—Yes, I should think so.

Mr. *Walter.*

489. For what term has this surveyor been appointed?—We know nothing of the appointment, it is in the hands of the bishop and the rural deans; the clergy have no voice at all in the matter, and are not consulted.

Mr. *Freshfield.*

490. You must have known what you were going to do; you must have had some notion of the works that you were required to do?—Yes, I knew what was wanted.

491. How did you know it?—I submitted plans and specifications to the Ecclesiastical Commissioners.

492. Did they give you any specification or direction?—No, they told me their architect was satisfied.

493. But beforehand, when you set at work?—The Commissioners returned the plans and specifications approved.

494. Then you worked on your own authority?—Yes, for a short time only, before the plans were returned.

495. Then there never was any report by the surveyor, was there?—Not that I know of. I have never seen one.

*Chairman.*

496. The buildings were accepted by the Ecclesiastical Commissioners on condition that they were put into repair and altered, were they not?—Yes.

497. You undertook to put them in repair, and then you required the surveyor of the diocese to come and see if they were in repair, and to give you a certificate if they were in repair?—Yes.

498. He actually came and went over with the surveyor of the Ecclesiastical Commissioners, you say?—Yes.

499. Did he say that he was satisfied?—Quite so; they both said that the whole work was very well done indeed.

500. Are complaints made as to the amount of fees payable in your diocese?—Yes, very grievous complaints.

*Chairman*—continued.

501. What is the amount of the fees in your diocese?—Four guineas a day, and 1½ per cent. on the estimate; but I have heard they will be altered.

502. That is as regards the surveyor?—Yes, and a guinea or a guinea and a half for the bishop's secretary.

503. Is it another great objection on the part of the clergy that they have no mode of appeal against the report of the surveyor or against the decision of the bishop?—That is a very great point of objection.

504. They want both, do they not?—They want both.

505. Do the parochial clergy in your own district wish to have the same power of selecting their own surveyor that the bishops and high dignitaries have?—We think that it would be treating us all alike; our feeling is there ought to be no distinction.

506. And they think, do they not, that they ought to have a power of being present and stating their own case when the dilapidations are being inquired into?—Yes, some do.

507. At this moment a surveyor may or may not allow the outgoing incumbent, or the representative of the incumbent, to be present and state his case when he makes his inspection, or he may say, I may make it without anybody being here; is that a matter of complaint in your diocese?—Some of the clergy do complain of that.

508. What are your general views with regard to the remedies for the evils which you describe?—In the first place, we desire that the clergy should have a voice in the nomination of the surveyors; in the second place, we wish to have a body of registered or licensed surveyors, from whom we might select, instead of being compelled to employ one man.

509. Do you wish to have any authority to decide as to the principle upon which the dilapidations should be determined, supposing that one surveyor takes a different view from others?—We thought that an inexpensive court would be, a kind of commission of two or three clergymen and magistrates in the locality or in the diocese.

510. So that you might have a standing commission, in the nature of a committee, who might decide inexpensively any questions similar to those which have been spoken of by Canon Williams?—Yes; either a standing committee or a committee appointed to deal with each particular case as it arose.

511. What would be your opinion with regard to the advisability of the Queen Anne's Bounty Board acting as permanent referees?—In case of a vacancy, and where the surveyor of the representatives of a deceased clergyman and the surveyor of the incoming clergyman differed, I thought that we might be empowered to call in the archdeacon, who is by ancient custom responsible, I believe, for the repair of buildings.

512. He is in the immediate district, and he would be well known to all the parties, you think?—Yes.

513. Or he might nominate some one to decide?—Yes.

514. Do you think that that power of appeal would keep the surveyors in one general course of proceeding?—I think that it would give satisfaction to the clergy.

515. And that it would do justice to the Church?—Yes.

Mr. *Beresford Hope.*

516. I understand from what you have said that the idea which I ventured to throw out to Mr. Aston, of the surveyor being rather a qualification than an office, agrees with your view?—Yes, it is entirely our notion.

517. Do you agree with the idea which Mr. Aston threw out, that the surveyors should, some of them, be land agents, and some of them architects, in order to meet the different wants?—Yes, they are so at present, I think; our surveyor is a builder.

518. Do you think that it is desirable that if there is a larger body of surveyors under the law than at present exists, it should include land agent surveyors, and also architect surveyors?—Yes; we should have a great difficulty if architects only were eligible for the office of surveyor; we have only one or two pure architects in the county, I think; and the land agents are most useful men.

519. Are many of your surveyors in the diocese of Lichfield surveyors, or are they all architects?—Ours is a practical builder; the surveyor for Staffordshire is, I believe, an architect, and I do not know what the surveyor for Derbyshire is.

520. Then you consider that your builder would be a very bad authority for the questions of dilapidations of the glebe fences, agricultural buildings, and so on?—I should like a land agent quite as well for some cases.

521. Then you think, in short, that while there ought to be a larger body of surveyors than there are at present, they should represent both branches of the surveyors' business?—Yes, some should be architects, some builders, and some land agents.

522. Are you in favour, as Canon Williams was, of the original draft of the Bill, which left the archdeacon, or the rural dean, and not the diocesan, as the referee?—I think that it is preferable to have the archdeacon; it is undesirable, I think, to bring the bishop in, he is too much occupied.

523. I suppose that you want some further power of appeal than exists at present?—Yes.

524. What do you think of the idea of gradually establishing something like a general system of insurance, which would get rid of the partial working of the dilapidations system, and create a sort of general fund for the purpose of keeping the residences and glebe houses, and so on, through England, in tenantable repair?—It is new to me, as yet I have not thought sufficiently about it to be able to give you an answer. I have heard it thrown out, but I could not give an opinion about it.

525. Off-hand you are not ready either to accept it, or to pronounce it impracticable?—I like the notion; I see some great advantages in it, but I have not thought about it.

526. What do you think of the possibility of givingany exemption to the incumbent who has rebuilt his residence himself?—There is a strong feeling in favour of some such exemption.

Mr. *Wait.*

527. If a licensed body of surveyors, such as you suggest, is appointed, do you not think that the expense would be very much increased, because it seems to me that it would involve the employment of three persons, two surveyors and a referee?—But we very seldom differ; we should probably agree upon one. I vacated a living, and my successor and I agreed upon one.

Mr. *Wait*—continued.

528. Have you any suggestions to make to the Committee as to the limitation of the fees to surveyors, of which you complain as being very exorbitant?—I think that it might be left to an agreement between the clergyman and surveyor. We did not think of laying down any scale of fees.

529. But you object to the per-centage, do you not?—Yes; I think that it is a bad principle; it makes the surveyor's interest and his duty run in opposite directions.

Mr. *Monk.*

530. Do you wish to have an uniform table of fees throughout the country, or do you wish merely to have the table of fees altered in your diocese?—I think that an uniform scale of fees throughout the country would operate heavily upon the country people, who pay smaller fees than are paid in the metropolis and neighbourhood.

531. Are you aware that the fee payable to the surveyor in your diocese is double what it is in some other dioceses?—No, I am not aware of that.

532. You are not aware that in some dioceses the surveyor is allowed to charge two guineas for the whole day, and one guinea for the half day?—No.

533. Do you think that the surveyor's fees on a vacancy of a benefice ought fairly to be charged to the incoming incumbent, or ought they to be a charge upon the late incumbent or his representatives?—In one aspect of the case, it seems right to charge them to the late incumbent, because the dilapidations arise from his neglect.

534. Practically are they not now charged on the incoming incumbent?—Yes.

Sir *Sydney Waterlow.*

535. Turning for a moment to your own case, has the surveyor made any charge?—No.

536. Were you aware that under clause 14 of the Act of 1871, he must make a report before any work could be commenced under his responsibility?—Yes, I think so.

537. Then, was not the work which was done really done to satisfy the surveyor of the Ecclesiastical Commissioner rather than to satisfy the surveyor of the diocese?—I thought that what would satisfy one would satisfy the other.

538. Were you not aware that no work could be done under his direction unless it was in accordance with the report which he had made?—There was great delay; I could not wait, I went on with the work, and I have not yet the certificate.

Mr. *Wait.*

539. Have you complained to the bishop under Section 8?—No.

Sir *Sydney Waterlow.*

540. Did you complain to the bishop that you could not get a report or a certificate?—No; men are very unwilling to complain to a bishop against a surveyor; there is a timidity about it.

541. Would you prefer some Court of Appeal, some Lay Court, Queen Anne's Bounty Board, for instance, to whom you could appeal in the case of a surveyor not doing his duty?—I thought that there might be a board in the county itself, a kind of county board, to control surveyors.

542. I understand that the clergy in your diocese generally object to the fees?—Yes.

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Sir *Sydney Waterlow*—continued.

543. Can you suggest any principle upon which the fees could be fixed, in a way which would be likely to give satisfaction to the clergy; for instance, that they should be subject to the approval of the governors of Queen Anne's Bounty, or subject to the approval of a local commission?—We do not think that there is any necessity for laying down the scale of fees. A surveyor would be called in, and a clergyman agree with him: "What are your fees?" "Two guineas a day in the country." "Come and do this work for me." I am inclined to think that we should be better off without a scale of fees, leaving every clergyman to make his own bargain.

Mr. *Walter.*

544. Does your experience agree with that of Canon Williams as to the satisfactory operation of the law as it was formerly, with regard to dilapidations?—Yes, but my knowledge only arises from reading the "Ecclesiastical Gazette" for instance; for the last 25 years I have seen very few cases.

545. Have you not known cases where an incumbent has died after a very long tenure of his living, and his widow has had nothing to pay dilapidations with, which may be very heavy?—I have never seen a case of that kind come into the courts, though probably such cases have occurred.

546. Have you ever known of such cases actually occurring, where it would have been simply useless to put in a claim for dilapidations because there was nothing to pay it out of?—Probably that is one cause of the absence of litigation; such a case is not unlikely.

547. That was the cause of the alteration in the law, was it not?—It may have been, and the property of the Church may have suffered; but very little litigation has taken place under the old law.

548. In order to prevent the possibility of such cases occurring, which we are told might occur even under the present law, would it not be very much better that the buildings belonging to the living should be valued at the time of the new incumbent taking possession, and that a deduction should be made from his income in proportion to the condition in which those buildings were found to be, on the principle that when a new church is built by any private person, 5 per cent. on the cost of the buildings has to be invested, in order to provide a repairs fund?—Yes, I think so; I never heard the idea thrown out until I heard it in this room; I should like to hear it discussed.

549. Would it not be much easier for a clergyman to pay 5*l.* or 10*l.* or 25*l.* a year out of his living and get quit of the bother of valuations, and to have no heavy bill sent in at the end?—I like the notion very much; I never heard it mentioned before to-day.

Mr. *Cowper-Temple.*

550. You said that you thought the clergy ought to have a voice in the nomination of the surveyor; what idea have you formed as to the manner in which the clergy could be convened for the purpose of electing a surveyor?—The clergy in each rural deanery may be convened on the requisition of three clergymen; for instance, if there is a surveyor wanted in our own district near at hand, I would authorise the clergy of that district to meet and agree upon a man to be entered upon the list of licensed and registered surveyors, and to be retained there during good behaviour.

551. You do not think of having one surveyor for each rural deanery?—I would have at least one in each market town, and that would be about one to each rural deanery.

552. When you said that it would be desirable to have a body of surveyors, did you anticipate a body larger in number than the number of rural deaneries?—I thought of one in each rural deanery, but there might be more.

553. And when the two persons interested might agree as to the person to be selected out of this list, would they at that time make some arrangement as to the fees to be paid?—Yes, that is my notion.

*Chairman.*

554. But there would be no objection, would there, according to your views, to calling in a surveyor from one deanery into the next, so as to let the choice be as large as could be within the diocese, leaving each party to make his own arrangement, so as to prevent a combination amongst surveyors to fix their own fees?—Quite so; to destroy the trade union as it were; I object to the present monopoly.

555. And under that system you think that it is possible that things would be satisfactorily arranged with very much less expense?—Yes, and less delay.

556. And that to a great extent would remove, would it not, the irritation which now exists?—Yes.

557. Do you think that, unless some alteration is made, the irritation of the clergy will continue to exist, and will rather extend than otherwise?—It is more fear of the Act, timidity. Since I have moved in the matter I have been told, "The surveyor will make you smart for this." It is the fear of the surveyor which the clergy entertain; he is so powerful.

558. They do not like the mode in which they are treated under the Act; and they are afraid to appeal, thinking that they will be marked men?—Yes. The feeling is to postpone the evil day; keep the surveyor out as far as you can.

559. And, at all events, it would be more satisfactory, so far as your knowledge goes, if a radical change took place?—Yes, certainly.

*Thursday, 27th April* 1876.

MEMBERS PRESENT:

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|---|---|
| Mr. Birley. | Mr. Gregory. |
| Lord George Cavendish. | Mr. Beresford Hope. |
| Mr. Cowper-Temple. | Mr. Monk. |
| Mr. Dodds. | Mr. Wait. |
| Mr. Forester. | Mr. Walter. |
| Mr. Goldney. | Sir Sydney Waterlow. |

GABRIEL GOLDNEY, Esq., IN THE CHAIR.

The Reverend WILLIAM ELLIOT, called in; and Examined.

Rev. *W. Elliot.*

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*Chairman.*

560. YOU are the Vicar of Cardington, in Shropshire, are you not?—I am.

561. You have considered, have you not, a good deal, the circumstances under which this Act is brought into operation?—I have.

562. And I think that you have written upon it?—Yes; I published a paper that I had read before a ruridecanal meeting.

563. Is there, or has there been, a strong feeling in your diocese with reference to the operation of the Act?—In our Archdeaconry, which is now called the Archdeaconry of Ludlow (and I believe, though I cannot speak positively, in the Archdeaconry of Hereford), the feeling has been, and is, very strong against the Act.

564. What are the principal grounds of complaint on the part of the clergy in your district?—The uncertainty to which they are exposed; they do not like the position in which they are placed now by the Act; that is to say, they consider that if any change had been made, there should have been a change in the law as well as a change in the procedure; they consider that their liability is very extreme, more than that of other classes in the country, considering them as a class of tenants; and further, that it being extreme, it is still very uncertain, because it rests entirely upon the individual will of the surveyor.

565. I think that you have only one surveyor for the whole of the diocese?—We have only one surveyor for the whole diocese.

566. And his decision both as regards facts and law you consider binds you?—Yes; subject to what the Act provides; that is to say, that the bishop may if he thinks fit, call in another surveyor on the question of fact, or give the complainant the option of taking counsel's opinion upon the question of law at his own expense.

567. Before going into the general operation of the Act, can you give to the Committee any instances which you consider extreme instances of the views taken by surveyors with regard to dilapidations?—I could give the Committee several instances.

568. Before you deal with the question of buildings, will you take any case that has been dealt with in your diocese with regard to surveying dilapidations on land?—A case has come within my own knowledge of an old clergyman who gave up a living of about 70*l.* a year on which there was no house. The greater portion of the stipend was derived from two bits of land, under Queen Anne's Bounty augmentation; one situated in the north and the other in the south of the county. The two plots of land amounted together to 29 acres, I think, in the rough. On that land there was no shed or house or building of any sort whatever, and the dilapidation charge upon that was 33*l.* besides fees.

*Chairman*—continued.

569. Do you know of what that dilapidation consisted?—The only thing that was left to the clergyman to conjecture were the gaps in the hedges, and the temporary wire fencing which his tenant had put up for his own convenience, and which he did not know anything about; that was all that could be charged. They could not charge the ground.

570. Do you know any instance in which lands have been thrown together which the surveyor has required to be restored?—I do; I know an instance where a personal friend of my own, to improve his glebe, threw two crofts together, and on giving up the living, the surveyor in his specification ordered the hedge to be replaced.

571. Can you give any other case with regard to land as to the putting up of fences, and so on?—Yes, I can give another instance. It is of no very serious matter, except as showing the kind of thing that the clergy are complaining of. It was not in my neighbourhood, but it happened to a friend of mine who was the in-coming incumbent. The surveyor in going round the premises espied oak posts-and-rails which had been allowed to fall into decay, because the hedge which it had been intended to protect had grown sufficiently strong at the bottom of the garden. It was with great difficulty that my friend dissuaded the surveyor from entering these posts and rails in his report, but he did eventually persuade him that there was no necessity for it.

572. It was the new incumbent who would have received the money for it?—It was the new incumbent who would have received the money for it. He pointed out to him that the necessity for the post and rails had lapsed. The surveyor answered that he had nothing to do with that, and that his duty was merely to report what he found there.

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*Chairman*—continued.

573. Has your attention been generally called to the difference between dilapidations from time and dilapidations occasioned by ordinary tenantable occupation?—Yes, of course that has been one of the chief points to which one has applied one's mind. Those who think with myself (and of those I think there are a good many) would have desired to see a change in the law in this respect; that there should be a distinction of dilapidations; in point of fact, that we should be legislated for in somewhat the same spirit in which the Irish Church was legislated for under Napier's Act.

574. That looks at what is permanent decay, does it not?—It looks at three classes of dilapidations. In the first instance, those which are strictly substantial repairs which are made a building charge; in the next place, classes of prospective repair, in which the structure showed capability of service for some years, but which it would eventually, after a lapse of time, become needful to restore; and finally, the purely tenantable repairs. That, as far as my recollection serves me, is the way in which Sir Joseph Napier divided it. But it is the spirit of the Act rather than the detail that we look to, with regard to our position under the present Act.

575. Under the operation of this Act, so far as your knowledge has gone, does the report for dilapidations embrace all those things as a charge upon the existing incumbent?—Yes, certainly.

576. Has it been complained of that the present incumbents on a change in the living, or the representatives of deceased incumbents on a vacancy, have to meet all those obligations which their predecessors had not been called upon to meet?—Most certainly.

577. And that forms one of the large complaints of the clergy?—Yes. I should add that it is a complaint that shows itself more particularly now, because as we fell immediately under the operation of the Act, we became at once responsible for all the neglect of past generations; whereas, if some indemnity had been allowed, we might, perhaps, have been more reconciled to the idea of having to pay both landlords' and tenants' repairs. But it comes in a very strong light when we have to pay the landlord's repairs of years past.

578. That charge on the present incumbent on vacating a living, or on leaving a living vacant by death, has been the operation of the Act?—The operation of the Act has been simply to compel the incumbent to put his house or building into the best possible state of repair.

579. If dilapidations are classed into landlords' repairs and tenants' repairs (to adopt a popular mode of expressing it), how would you suggest that it should be done?—It has occurred to me that the living should be responsible for what are called landlords' repairs; that Queen Anne's Bounty should be empowered, disregarding the Stipendiary Curates Act for small livings, to lend from time to time such sums as are wanted for substantial repairs, under the order of the surveyor for the time, whoever the surveyor might be. I object to the statutable surveyor.

580. That is to say, that the permanent repairs should become a charge upon the living of which the new incumbent would bear his portion?—Yes.

581. And that the repairs of ordinary wear and tear should be paid by him personally?—Yes. As the clergy may be supposed to be

*Chairman*—continued.

honourable men, and have not proved themselves in the past deficient in keeping up their glebe houses, one result of that would be that it would be an encouragement to the clergy, and they would avail themselves largely of it to go on keeping their houses in a better continuous state of repair than they are likely to do if they feel themselves under the stringent operation of this Act.

582. According to your views and experience, would you trust the clergy to lay out their own money?—I should, most distinctly.

583. And if some constituted authority received a declaration or certificate from them and from the rural dean that it had been so laid out, you think that it would answer every purpose of maintaining the buildings and the church?—I cannot see why it should not.

584. Under this Act is there any facility or any mode by which new incumbents can recover their money from the representatives of deceased incumbents other than existed before the passing of the Act?—They can recover by Exchequer process. I do not know that there is any other way.

585. Supposing that an incumbent dies insolvent, does his successor get any more under this Act than he did before?—I cannot see how he can. If an outgoing incumbent is insolvent, and has nothing to pay, the incoming incumbent is no better off than he was under the old Act.

586. Is he not worse off by having to pay the money himself?—That I suppose he would have had to do under the old system, if the money had to be paid at all.

587. The operation of the Act, as I read it, is that the new incumbent has to pay over to Queen Anne's Bounty the whole amount of the dilapidations according to the surveyor's report, and get it if he can from the representatives of the deceased incumbent?—Yes.

588. With reference to the parties who are to make the report or survey, would you have it limited as it is now, having one or two surveyors in the diocese, or would you leave it open to the incumbents to employ whom they liked?—I should leave it thoroughly open. If it might be thought necessary to have a safeguard upon the character of the persons who were surveyors, let that be effected by their being registered somewhere or other; but otherwise I would have it perfectly open.

589. So that in every diocese there might be a very large selection to choose from?—Yes, just as a man chooses his lawyer or his doctor.

590. What tribunal would you suggest, in the case of money being borrowed, for giving a certificate that the money had been properly expended, or the dilapidations properly surveyed?—A commission either for certifying it, or for reference in case of dispute, would not be very hard to form from the magistrates in sessions, and one or two of the neighbouring clergy, and so on. I would myself rather see the lay element than the clerical element dominant on such a tribunal.

591. That is to say, supposing the chairman of petty sessions and the rural dean together certified that A. B. was a fit and proper person, you think that it would answer all the purposes of safety?—I should think so.

592. In the case either of a vacancy or a change of living, supposing that the five years is extended, if the incumbent laid out the money, and did the repairs in accordance with the report, and declared

*Chairman*—continued.

declared that he had done so, and the rural dean countersigned that declaration, would that, in your opinion, be a sufficient check for the safety of the buildings and of the church?—I think I should be inclined to have a larger commission than the rural dean simply; I think that a similar commission to that which prevailed in the Irish Church for a length of time (but that was with a view of assessing dilapidations originally), chosen out of the clergy and magistrates of the county, with practical men chosen from each side, would do everything which was wanted with perfect satisfaction.

593. Would you import the churchwardens into the question?—I do not think I should; it never occurred to me, and I do not see why it should be done.

594. Under the Act of 1871, the rural dean can make a report himself alone, and upon that report, that the buildings are dilapidated, the bishop may issue his mandate; would you require any additional report from the churchwardens?—No, I think not; it has never occurred to me, and I do not see why there should be one; the churchwardens have their proper functions to fulfil, but they have never touched, and I do not see that they ought to touch, the clergyman's house and glebe.

595. Nor the repair of the chancel?—With regard to the chancel, there might be a difference, certainly; I was thinking of the glebe and the glebe-houses.

596. You said that you were a vicar; is your rectory in lay hands or in ecclesiastical hands?—In lay hands.

597. What remedy is there under this Act with regard to the chancel, as respects the lay impropriator?—I really do not know.

598. Is there any remedy?—Not that I am aware of.

599. As regards a rector, if he is an ecclesiastical rector, the Act operates, does it not?—Yes.

600. But if he is a lay rector, the Act does not operate?—So far as I understand it, that is so.

601. Will you state any further suggestions which you think would either meet the question of dilapidations generally, or be advantageous in amending the Act?—I should be inclined to urge upon the Committee the great hardship which the present generation of the clergy are suffering. As we are appealing for redress, it strengthens our case when we feel that we have entered upon our benefices under one system, whether that system had been allowed by custom, rightly or wrongly, to obtain, I cannot say; but still there the system was, and it had the sanction of custom; and it is hard that, entering in one year and leaving in the next, we should not have any kind of alternative, even of time. If we had had ten years to give up our livings and go out, I fancy many of us would have availed ourselves of that; I should, for one.

602. You spoke of borrowing under Queen Anne's Bounty Act, especially in the case of small livings; do you think that it is necessary that the patron should be required to give his assent before the loan is made?—Yes, I think so.

603. You think that the patron's assent to the loan by Queen Anne's Bounty is essential?—I do, because what I propose would be to impose upon the patron through the living more responsibility than he has at present, and not to detract from his rights. The patron's rights and interests are imported into the Act in a marked way, and you cannot (at all events in the case of private patrons) dissociate the idea of money value from those rights and interests. I should like to see the patron's responsibilities drawn out a little more prominently. Of course it would fall upon the clergyman as long as he lived; but still the clergyman would not have to sink any capital sum, and the patron, as represented by the living, would be responsible.

*Chairman*—continued.

604. The charge for the permanent structural works being more or less affects the patrons interest?—Clearly. If you will allow me to put an extreme case, which will, however, mark what I mean; take the instance of a small living, and suppose that the patron is anxious to sell that living, suppose him to apply to the bishop for the surveyors' inspection to make the clergyman put the house into good repair (the patron has the power under the Act to do so, and it is discretionary with the bishop to order it); Queen Anne's Bounty, I suppose, will not lend to the living because it is not of sufficient value, then the whole of the repairs fall upon the clergyman. The patron immediately that is done sells the living, and the patron's property is thereby increased in value, not from ecclesiastical revenues, but absolutely from the personalty of the incumbent. That is contrary to the first principle of the law on dilapidations.

605. That is to say, that it is possible for a patron with an old incumbent who has been in the living for many years, at this moment to call upon the bishop to have a report made, and to bring the Act in operation against him?—Certainly; and there is nothing to prevent his going into the market and selling the living, and the incumbent's having to pay for the improvement of the property out of his own pocket.

606. But supposing that the incumbent did not do these repairs, then the living would be sequestered?—Yes.

607. That would affect the patron in the same way, would it not, as the charge upon Queen Anne's Bounty?—It would; but sequestration is a strong measure, and many and many an incumbent, I take it, would rather pay the money than have sequestration. It is a loss of caste altogether, a bar to preferment, and a sort of public proclamation of insolvency; I think the Committee will agree with me that many men would pay the money rather than suffer such a loss.

608. And you think that, in fairness to the clergy, and to protect themselves against such an action, it would be better to let the structural repairs depend upon Queen Anne's Bounty?—I think so.

609. Supposing that the patron objects to give his assent to that, what then?—Then it must become a matter between the incumbent and the patron and the bishop.

610. Not as the Act stands?—Not as the Act stands, I admit.

611. If the order is made, and the patron refuses to lend the money, Queen Anne's Bounty have not the power, and then the obligation falls again personally upon the incumbent, does it not?—Yes; but the incumbent would, under my suggested circumstances, be relieved; if the patron chose to say: "My property shall not be repaired," the incumbent would only have to answer,

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*Chairman*—continued.

answer, "Very well, it will not fall upon me, because the law protects me."

612. Under the Act, if the bishop issues a mandate, the surveyor has to make his report, and if that report is not appealed against, or if appealed against, is confirmed by the bishop, the incumbent has to find the money to do the repairs, has he not?—Yes.

613. But he may borrow the money of Queen Anne's Bounty if the patron assents?—Yes.

614. Supposing that the patron did it with a view of benefiting himself, and does not choose to assent, the incumbent is no better off, is he?—The incumbent might be relieved from paying for substantial repairs, if it were said, if Queen Anne's Bounty will not, or the patron will not, at all events, the incumbent need not.

615. You say that the incumbent ought to be relieved from the substantial repairs, whether Queen Anne's Bounty lends the money, or not?—Yes.

616. But what would the incumbents do if the wall were tumbling down?—A patron surely would not allow things to come to that pass; there might be conceivable cases, and I think that there are such cases, in which it might be beneficial to livings to sell houses and get rid of the property altogether.

617. Your view, I gather, is this: that however bad the structural state of the buildings might be, the patron is a necessary ingredient to Queen Anne's Bounty advancing the money to do the repairs?—I perhaps could hardly go so far as to say that he is a necessary ingredient; but, personally, I should be sorry that his consent should not be called for.

618. You think that his assent should be asked?—If he refused, there it must be; the incumbent, at all events, should not suffer.

619. It might be left to Queen Anne's Bounty Commissioners, after the patron had been warned that there was an application?—I think so.

620. With reference to an annual payment by incumbents in the shape of an insurance against dilapidations; have you considered that at all?—I think that there are, at all events, two general objections to such a scheme; one is that the careful people would have to provide for the careless people, and another is that large livings would be called upon to provide for small benefices.

621. Do you happen to know that the Bishop of Exeter has taken somewhat similar views to yours in a charge which he has recently delivered?—Only from a paragraph that I saw in the "Times" newspaper.

622. In that report he adopted the same classification which you have given, did he not?—So far as one could see from the brevity of the report, it was so. At all events it was something in the same direction.

Mr. *Walter.*

623. I did not quite understand your objection to the principle of payments in the nature of insurance, that is to say, a deduction from the annual value of the living in order to meet the charge of dilapidations, so as to avoid a large sum being payable at the end of the tenure?—Each living could hardly insure for itself.

624. Why not?—Because in all insurances the great point to the insurer is the uncertainty of it. Supposing that we were all put under an insurance there would be no uncertainty; we know that a house must, within so many years, come down.

Mr. *Walter*—continued.

625. When a new church is built a certain sum has to be invested, I think about 5 per cent. of the cost of the building, in order to meet the cost of repairs; but in this case, instead of a capital sum being invested, the interest on that sum would be deducted from the living; might not some such plan be adopted in the case of dilapidations?—I think that in the case of new houses that might be brought to bear. The scheme which I was contemplating was a general scheme to include all the benefices in the kingdom. If you start from the first building of a new house I do not know why something of that kind should not be done.

Mr. *Monk.*

626. Do I correctly understand you to say that you think the churchwardens should not be called upon to look to the state of the glebe-house?—Not in the direction in which the Chairman of the Committee proposes that they should be called upon to do so.

627. You are probably aware that at the visitations of the archdeacons and the bishops, the churchwardens are asked in the Articles of Inquiry whether the glebe-house is in a state of repair?—Yes.

628. You have no objection to that, have you?—None whatever.

629. Are you also aware that in the Dilapidations Act powers are given for the removal of unnecessary parts of any glebe-house?—Yes.

630. And that, I presume, would apply to walls and other fences which are found to be unnecessary. Do you think that any further power should be given under an Amendment Act for the removal of stone walls and other fences which are found to be unnecessary, or do you think that they are sufficiently covered by Section 71?—I think that they are quite sufficiently covered by that section.

631. Do you also think that it is desirable to extend the provisions of this Act to lay rectors, and to other corporations who are owners of the great tithes, and by whom the chancels should be repaired?—Yes, I do, most distinctly.

Lord *G. Cavendish.*

632. In valuing dilapidations in the case of glebe lands, would the condition of the land be taken into consideration by the surveyor?—I really cannot say how the surveyors would act. They are not responsible to the clergy for the views which they take.

633. I think that you mentioned a case in which on 29 acres there was 33*l.* payable; supposing that there had been two white crops or a crop of hay sold off that land without manuring, might not the dilapidations very well come to 1*l.* an acre?—I am reminded that we are not liable for the cultivation of the land.

Mr. *Birley.*

634. Then it was the state of the fences, I suppose?—I suppose so.

635. Do you know what the rental of those 29 acres was?—I cannot say what it was without referring to the letter.

Mr. *Beresford Hope.*

636. I understand that you would not see your way

Mr. *Beresford Hope*—continued.

way to anything like a system of general compulsory or quasi-compulsory insurance all over England in order to equalise the burden?—No, I cannot say that I do.

637. May I ask whether you simply do not see your way to it, or whether you are opposed to it?—I am opposed to it, because I see, or I fancy that I see, obstacles in the way.

638. But do you not think that some approximation might be made to such a system in particular cases?—In cases which were put to me by a Member of the Committee analogous to that of a new church, I think that special provision would be made for the repairing fund of the house. As things are I can conceive no way in which anything like equitableness could be arrived at.

639. You are in favour of opening the surveyorship under the Act, and making it a qualification, and not a separate office?—I am, for two reasons, a general and a particular reason. As far as I understand the spirit of modern legislation, there is nothing to which the House of Commons or Parliament has opposed itself more than statutable surveyors; and I do not see why we should be in a different position from other classes of the community.

640. You are in favour of having architect surveyors and land agent surveyors for the different cases that come under the Act?—I would have all surveyors appointed subject to the check of the bishop and his council, as at present.

641. It came out in evidence on the first day that the present limited list of surveyors contained representatives of three distinct professions, some, and perhaps the greatest number, were architects, some were land surveyors, and there were one or two who were builders; do you think that it is desirable that the incumbent should be allowed to call in an architect for the house, a land surveyor for the land, and so on?—I think that that might introduce confusion, and that the persons interested would naturally go, as any gentleman would go for what he wanted to be done, in any valuation, to the person most capable of doing it; there are valuers throughout the country who value both houses and lands.

642. But if you want to give free trade in it, I want you to see how far you would extend that principle of free trade?—I do not know that I should put any limit to that further than the check to be exercised, say by the bishop and the rural dean, who should register those names; and that check would be more directed to the personal character of the surveyors whose names were submitted to them, as, for instance, whether they had been at any time insolvent, or whether there were any circumstances that the bishop and rural dean should think rendered them unfit to be registered surveyors of the diocese; short of that I would have it as free as possible.

643. Are you in favour of recurring to the original form of the Bill, in which the archdeacon or the rural dean filled the place which the bishop now occupies in the Act?—I do not know that we should be very much bettered by that, but I think the bishops would be. They would have a good deal of unnecessary trouble and (may I venture to say) obloquy removed from them.

644. Do you not think that the thing would be done quicker and easier and more *in foro domestico*, so to speak, if you had to go to the lesser instead of the greater dignitary?—It might be so, but so long as the groove is so plainly marked in the Act I do not know that a mere substitution of the archdeacon for the bishop would help us.

645. It would not be a saving of time to go to a less over-weighted official?—No, I do not see any advantage in it.

Mr. *Dodds*.

646. Has your attention been called at all to the clauses in the Dilapidations Act with reference to fire insurance?—Not very much.

647. As a matter of fact do you yourself insure in the way prescribed by that Act?—Yes.

648. Is it not inconvenient to have to produce the receipts at visitations every year; what do you do with regard to that?—I do not as a matter of fact produce them.

649. I suppose you know that the law is that the incumbent shall cause the receipt for each year to be exhibited at the visitation?—Yes; one began by exhibiting them. I do not know what others have done, but I think that others have done pretty much the same as I have done.

650. When you took them to the visitation to exhibit them, how did you exhibit them?—I showed them to the legal official, the registrar.

651. Is that clause generally overlooked or neglected by the clergy?—I cannot say, but I should be disposed to think that many neglect it as I do.

652. Have you given your attention at all to the 57th Section, under which the incumbent is made liable for the repair of the buildings destroyed by fire?—No.

Mr. *Wait*.

653. I understand you to say that your objection to a general insurance fund being created is, that it would press hardly upon the provident incumbent, while the improvident incumbent would get a corresponding benefit; is that so?—Yes.

654. Have you contemplated the probability of the out-going incumbent, or the representatives of the deceased incumbent, and the in-coming incumbent not agreeing upon one of those registered surveyors?—Yes.

655. What would you propose to do in such cases as that?—Let each "employ his own surveyor."

*Chairman*.

656. I did not quite gather the gist of the last part of your evidence; do you go so far as this: that the outgoing incumbent and the incoming incumbent might choose their own surveyors, whom they liked, as long as they got one registered person, and it was sanctioned by this commission that you talked of?—Yes.

657. That is to say, supposing a man came from Yorkshire into the adjoining diocese, if he liked to bring his own surveyor with him, and if he was certified as a proper man, that would be sufficient?—Quite so. In the Bill introduced into the House of Lords in 1862, in clause 17, I think, you will see that power is given to the incumbents to choose their own surveyors if they can agree to do so.

658. Will you read the clause to which you refer?—"Provided always that when, upon the appointment of a new incumbent, he and the former incumbent, or the representatives of the latter

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*Chairman*—continued.

latter (as the case may be), shall have agreed upon the sum to be paid for dilapidations, and the same shall be paid accordingly, the surveyor acting for the diocese shall not interfere further, but the new incumbent shall, within ten days after the same shall have been agreed upon, transmit to the archdeacon a true copy of the estimate of the repairs to be done, and thereupon the new incumbent shall proceed without delay to execute the repairs for which he shall have received the dilapidation money; and he shall, within twelve calendar months from the day of receiving the same, produce to the archdeacon regular vouchers proving that the repairs so paid for as aforesaid have been executed and paid for by him to the full extent at least of the money received by him."

659. That you think would be quite sufficient at present?—In wishing that the out-going incumbent and the in-coming incumbent should each provide their own surveyor, and come to an agreement between themselves, I was following the spirit of this clause of the Bill as it was introduced into the House of Lords on the recommendation of the House of Lords' Committee.

660. Do you know of any particular instance of dilapidations near Bridgnorth?—I know an instance of a house being very highly charged there.

661. Will you detail that to the Committee?—This was a living of 120*l.* a year in which there is no parsonage house. In the year 1867 a small property, consisting of a house, yard, and stable, was to be sold in the village, and it was proposed to buy this property, and offer it to meet a grant of the Ecclesiastical Commissioners. The Ecclesiastical Commissioners sent down a surveyor of very high character, who reported that if 25*l.* were laid out upon it, it might be taken at 180*l.* They spent 30*l.* upon it, and the Ecclesiastical Commissioners received it as worth 180*l.* The incumbent held it for six years after 1867, and on giving up the living (not dying), it fell under the operation of the Act, and he was charged 145*l.* dilapidation money upon the property which had been bought for 180*l.* six years before.

662. I assume that he had to pay that money?—He had to pay that money.

*Chairman*—continued.

663. So that the income from this augmentation was not of much advantage to him?—Eventually it certainly was not.

664. Do you know any other case?—I know several, but I think I need hardly trouble the Committee with them as I might be speaking a little off book; I know, for instance, a case, a small matter, where the sanitary authorities had told a clergyman that he must disuse a pigstye and build another, which he did, and he was compelled on leaving the living, to restore the old pigstye; what for I do not know, but he had to do it.

Mr. *Birley.*

665. In the Bridgnorth case, what was the nature of the dilapidations which were charged at 145*l.*?—I did not see the specification.

666. Do you know the property?—I do not know it personally; I only have the letter of the clergymen to whom it happened.

667. Was it cottage property?—It was cottage property. One part that came under the dilapidations was what had been a stable. It was a nuisance to the neighbouring cottages, and it had ceased to be used as a stable, because of the public nuisance; I do not think that there was any order that it should not be used, but the clergyman had not used it for six years as a stable because it was unhealthy and a nuisance, and he was charged to restore it as a stable.

668. Was that done?—I do not know what was done, but he had to pay the 145*l.*

*Chairman.*

669. But the pigstye, you say, was removed under sanitary directions, and was ordered to be paid for as dilapidations?—Yes; it is rather hard that the law should catch him both ways.

Mr. *Dodds.*

670. As you have not attended much to the question of insurance, you are perhaps not aware that a Bill was brought into the House of Lords on the subject in 1872?—No, I am not.

*Chairman.*

671. Do you know any case of new buildings where the surveyor has required to survey them?—No, I do not think I do.

The Reverend Digby Strangways Wrangham, called in; and Examined.

Rev. *D. S. Wrangham.*

*Chairman.*

672. Where are you living now?—I am now Vicar of Darrington near Pontefract.

673. And you formerly held the living of South Cave, did you not?—I was formerly Vicar of South Cave.

674. Are they both in the diocese of York?—They are both in the diocese of York.

675. I believe your attention has been called a good deal to the question of Ecclesiastical Dilapidations as well as this Act?—Yes, I have taken an interest in the question for years even before this Act came on the *tapis* at all, and I went a good deal into the law of dilapidations then.

676. Before going into your general views,

*Chairman*—continued.

will you state to the Committee the exact case of your entering your old living and quitting South Cave, and entering upon the benefice which you now hold?—In the year 1860, I went to South Cave, and I found a house just finished a fortnight before standing in a ploughed field; I had to do everything, to make all the boundary walls, and all the outhouses, and almost all the permanent fences throughout. I took great pride in my place because I had made it, and every year I sent over the carpenter and the mason with *carte blanche* to go and do whatever was necessary to the walls and the house and outbuildings. In August last, when the archbishop offered me the living of Darrington, I did the same thing. I sent the men

*Chairman*—continued.

men over, and they came to me, and said: "Well, really we can find nothing more to do; it is in as good order as we can make it." In the course of that reparation there was a kitchen garden wall which I had myself built about twelve years before standing to the north, some of which had been injured by hard weather, and the coping had got out of order. I had the whole thing pulled to pieces, and new bricks put in, and new coping where needful, and had the whole thing repointed at an expense of some pounds, I think, and I went on my way rejoicing, imagining that my successor was a very lucky man to have had such a predecessor. I went to Darrington where I found the house in good order, but the fences in exceedingly bad order, mere ramshackle fences nailed up against trees. I got 18 *l.* dilapidations at Darrington on my new living, and I had to pay a week or two ago 65 *l.* on my old living at South Cave. There were two different surveyors, and I have got their reports if the members of the Committee care to look at the sort of charges which make up the 65 *l.*, and the sort of charges which make up the 18 *l.* I am bound to say that the surveyor at Darrington, when I showed him the schedule of his brother surveyor at South Cave, said, "Well, all I can say is, Mr. Wrangham, if I was to survey upon that sort of principle, I should never have dilapidations less than 150 *l.*, and you would have had a great deal more here." He told me that the fences were very bad, but he felt that they would last for a certain time, and he did not think that it was fair to make my predecessor at Darrington pay for what would last for some years, because he said that it was a waste of money pulling down work that had some last in it to replace it with new work.

677. I understand from you that the views of the different surveyors, as to whom you had no choice, have materially affected the amount of dilapidations that you had to pay and receive?—Yes; of course there is always an interval between the vacancy of a living and the appointment of a successor. The survey at Darrington was made the day after my predecessor left the house, and the new comer, whoever he might be, could only have a month in which to appeal; this was at the end of August; I came into residence on the 28th September, and found myself with about four days to find out whether there was anything to appeal about or not, and the time died out before I had an opportunity of looking round.

678. Under the Act, after the surveyor has made his report, one copy has to be sent to the new incumbent and another to the old incumbent, and they have a month left, in which to appeal, have they not?—Yes, I believe that to be so; but the new incumbent is not necessarily in residence; and supposing a man leaves a living in Cornwall, to take one in Yorkshire, a month gives him very little time for appealing.

Mr. *Monk.*

679. But is not a power given to the new incumbent to appeal within a month after he shall have been instituted or admitted?—No, I think it is within a month after the report is sent to him; my point is that it is a short notice, because a man at one end of the country going to a living at the other end of the country has very little opportunity of appealing.

*Chairman.*

680. Although you are a person who has studied this question of dilapidations, and you knew something about the Act, you did not appeal?—I did not, and practically I had no opportunity of appealing, because I was not in residence until within four days of the time, and when the time for appeal passed by. I was instituted at Darrington on the 8th of September, and I left South Cave on the 28th, and the archbishop's mandate to survey did not go out until the beginning of November; the surveyor got married and the survey was not made till the middle of December, or nearly four months after the time of the vacancy. The result was that in this very wall upon which I had spent this money, the hard weather in November broke out the new work, and part of the dilapidations was to put that all right again.

681. Will you state to the Committee, if you please, what your objections to the Act are as it now stands?—My first objection is, that it is applying a very stringent machinery for the enforcement of a totally undefined liability; nobody knows, even the surveyors themselves say and show that they do not know, what dilapidations are, because one man in one Riding of Yorkshire values upon a principle which his neighbour in the next Riding says it is impossible for him to adopt; I am sure the clergy have no desire to run away from their fair responsibility, but we want our responsibility in some way defined.

682. Supposing that there is a difference of view between the surveyors, do the clergy generally want some mode of appeal?—No doubt, and, practically, under the Act, we have no appeal. I appealed about South Cave, and the archbishop was very kind about it, but he said, "The next step is to send another surveyor over; but I am bound to tell you that, whatever may be the result of the appeal, the whole cost of the second survey will fall upon the appellant, and it will be about 10 or 12 guineas."

Mr. *Dodds.*

683. The work costing 65 *l.*?—Yes. When I knew, as I do know as a fact, that there is an association of these surveyors, and that the archbishop can only send over a diocesan surveyor, and that they are all associated together and act upon a set of rules of their own, it is simply appealing from Peter to Peter; we have no chance. One great evil of the Act is that there is absolutely no effective appeal at all. The bishops themselves, the most hard-worked men in the world, have very little time to go into it, and we are probably handed over to the tender mercies of the bishop's secretary, who may be a very good man, or who may be a man in whom one will not have very much confidence.

*Chairman.*

684. Practically, you think that the bishop's secretary is the man who has the ultimate decision of these matters?—I have no doubt about it. He shows the case to the bishop, but the bishop naturally has not time to go into the details.

685. Do you agree with Mr. Elliot's view, that there should be an open choice to the incumbent, both coming in and going out, in the appointment of the surveyor?—I think so. I cannot see any reason why ecclesiastical property should be fenced round with an elaborate system of defence from which lay property is entirely free. After all,

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all, clergymen as a body are a body of gentlemen, and it seems to me that the position which we are put into under this Act is that we are either treated as if we were children or as if we were rogues. We are tied up at every turn; one may not insure one's house in one's own name but in the name of Queen Anne's Bounty as well, and every farthing of dilapidations, or every farthing under the insurance, has to be paid into Queen Anne's Bounty, and the work has to be done by the surveyors and not by ourselves, and the money only to be paid under their certificate. It seems to me to be putting a very large body, and I hope a very respectable body, of men into a position which their lay fellows would resent very much about their property.

686. Then you would restore to the clergy those rights of citizenship which other people, holding property for a time, enjoy?—No doubt. We have all the responsibility of freeholders, and we have the very small liberty of a very strict lease. We are called upon to pay as freeholders, and to live as leaseholders; or rather, we pay both as freeholders and as leaseholders.

687. Mr. Elliot's evidence went to the effect that he thought that dilapidations ought to be classed in two categories; do you agree with him in that?—I think that it would be a very good thing if it were done; but, of course, that would be a change of the present liability. I do not think it is the liability that we object to, but the way in which this liability is forced upon us, that liability being totally undefined. The only thing which is very certain and very sharp is the machinery which enforces the liability. The surveyor actually walks into our houses now and orders simply what he likes. In the case of this 18 *l.* at Darrington, the great item in the schedule was for opening out the cesspools. The idea of making that into a matter of dilapidations!

688. A large portion of the dilapidations, you think, clergymen would do themselves naturally, as they did before, if they were left to themselves?—No doubt; and I am quite certain that the effect of this Act will simply be to prevent money being spent upon glebes. Who would be fool enough to spend a lot of money upon a glebe house, when he knows that when his time comes by promotion, or resignation, or death, all the money that he spends will come back upon him in a sort of interest in the way of dilapidations? It is not only a heavy fine upon taking a living, but it is a distinct discouragement to money being spent upon glebe houses. I do not suppose that there is any class of property upon which there is so much private money spent as upon glebe houses; a great part of the work done at a parsonage house is done out of the parson's own private means; because you find very often indeed a very small living with a very big house for it; and if a man is to live in that house he must have private means of his own. Yet there is no diminution of his liability at the end of his time, whether he has got a large house or a small house; the house is looked at simply as a house, and the means of keeping it up are not regarded at all.

689. You have a large acquaintance, I suppose, with your brother clergymen; do you find a general dissatisfaction expressed upon the subject?—*Now* the shoe is beginning to pinch. When this Bill was first brought in, I brought it before our clerical meeting, and I could get no one to listen to me; they were taken with the chance of getting their five years' certificate. Now as to that five years' certificate, if one applies for it, the surveyors say: "If you require a five years' certificate we must calculate what would require to be done during those five years, and charge you very much more than if the survey came in consequence of a vacancy. The Archbishop of York mentioned a case of the kind to me the other day; I believe it was the present Bishop of Winchester who applied at his palace for a five years' certificate (I really am speaking without book, but it was one of the bishops); and the surveyor said: "Well, if this see was vacant, I should order such and such a beam, pointing to a beam in one of the largest rooms, to be repaired; if you want a five years' certificate I must insist upon having that beam out altogether," and the Bishop declined his five years' certificate upon that ground. So that what was the bait to the clergy has simply turned out to be anything but an advantage to us; there is no good in getting a five years' certificate if you are to pay beforehand for all the repairs that at the end of the five years you could be called upon to pay for.

*Chairman*—continued.

690. Supposing the five years to be deemed an essential element in a clergyman's happiness, do you think that that could not be accomplished by the production of a competent surveyor's report, although he were not officially registered as a diocesan surveyor, if it were backed by the rural dean?—I see no reason why it should not be so done. At present it is absolutely valueless.

691. The five years' certificate, I believe, is now very seldom applied for?—I fancy very seldom. I know the inspector at South Cave told me, when I was talking to him about the Bill, that he should always require a very much larger amount of dilapidations if we applied for a five years' certificate.

692. Would your views be to meet the objections by leaving the thing open to parties to choose their own surveyors if they were properly vouched?—As I have already stated, I do not see why we should not have the same protection as lay property, neither more nor less. There is no reason whatever that I can see for putting us under regulations which do not affect property generally. I am quite sure that the work would be done much more cheerfully if that were so, because I believe that the amount of private means spent upon glebe houses is very much larger than those that are the proceeds of the livings; and if you compare the money which is spent on glebe houses with the money which is borrowed from the Governors of Queen Anne's Bounty, the amount would be very vastly in favour of the private purse.

Mr. *Cowper-Temple.*

693. When you spoke of the undefined liability to which clergymen are exposed in these instances, what was your idea as to the mode of defining the liability which would be incurred?—I think that that might be done by legislation, as to the sort of condition in which houses should be left. Take Phillimore's definition. He says this: "The executors of a deceased incumbent are not bound to put the rectory house into a *finished* state of repair, but they are only bound to restore that which is actually in decay, and to make

Mr. *Cowper-Temple*—continued.

make such repairs as are absolutely necessary for the preservation of the premises." That is the sort of principle, the principle of waste in lay property, and I do not see why it should not be authoritatively set out that that should be the principle of dilapidations in ecclesiastical property. But one finds that the surveyors insist upon everything being left in apple-pie order.

694. Have the surveyors now no prescribed rule to guide them in dealing with dilapidations?—From my conversation with the surveyor for the Hull district, it appears that they make their own rules. There is an association of them, and they have drawn up certain rules as to what is to be required of incumbents. They first make the law, and then they carry it out; but their law is that we are to put it into complete repair.

695. Do you think that there ought to be a distinction between the repairs required of a tenant and the repairs required of those who have a larger property in the building?—I think it would be only fair (but it would be changing what has been the law hitherto) that for structural repairs the living should be charged; that the incumbent for the time should borrow the money upon the living, and that it should be paid off in a certain number of years by himself and his successor; because after all his successor gets the benefit of the repair in his degree, and the amount paid to Queen Anne's Bounty diminishes every year. But it is not a point which I should press very much. It is a change, no doubt, of the law as it exists at present.

696 Do you think that the clergy would be much better off if they had simply the opportuniy of selecting what surveyor they liked, because they would be limited of course as to the status of the surveyors out of whom they would choose; and do you think that exactly the same evils might not arise with a freer choice of the individuals who should act in each case?—I think not. It is not found to be so in leasehold property here in London, I believe. The principles are ascertained, and the work goes on without difficulty. It is not found necessary in leasehold property to have statutable surveyors, and I do not see why it should be necessary in ecclesiastical property. The great difficulty about dilapidations is, not getting the surveyor, but getting the money. The real difficulty, and the real cry about dilapidations, has always been that a man dies insolvent, and that there is no money to be got. This Act does not help that matter at all.

697. Are you aware of the view which the surveyor took when he reckoned an unclean cesspool to be a want of repair?—I asked him what his principle was, and he said, "Well, I look at myself simply as the agent of the property." The principle is totally undefined. I do not know whether this man is a member of the association; I rather fancy he is one of the few who are not. He said, "I go into a parsonage house and premises, and I look round, and see what would improve it." And upon that principle he proceeded to direct the cleaning out of the cesspools.

698. I presume that in the other case the surveyor only looked at the actual necessary repairs?—In the other case he went round, and he looked even to the escutcheons upon the keyholes; and there are several cases in which I am directed to put escutcheons upon the keyholes, and actually to repair a crack in the plaister, where a window had been filled up, and the wall had sunk a little; it was the merest cracking of the plaster. I have here the schedule of his report.

Mr. *Cowper-Temple*—continued.

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Mr. *Dodds.*

699. Is that your own case?—Yes, at South Cave.

700. Would you give us, shortly, the heads of the charges?—The first one was to take down and rebuild the garden walls facing the road, for a height of 1 ft. 9 in. from the coping, where the stone was decayed.

701. That was the one which you referred to as having yourself repaired before you left?—I built the greatest part of it. It was the stone of the country, and it was covered with broad stone coping, and all run in with cement; but the weather had defaced the surface of the stone, which is a softish stone. It is one of the best walls in the parish, and yet I am to take down two feet of it; and I had spent upon that very wall 9 *l.* within two years, in repairing and putting out bad stuff. The next repair was of the wall next the paddock, cutting out soft bricks, and renewing defective pointing. That is the one which I had done in the month of August, and people were laughing at me for doing it then. Then there was new pointing to slates, and puttying to windows, renewing all defective pointing to windows and under sills, and making good pointing of walls, where necessary; little bits which would come out from the stress of weather. Then I had to put some locks in working order, and to re-hang a window, and put new sash fasteners. In the coach-house, I had laid down myself, within the last 12 years, a perfectly new floor, of great thick, square, red tiles. The place where the carriage ran in and out, of course, got a little worn; and I am directed to take all that up, and lay it over again. It is, in fact, putting the whole place into apple-pie order.

702. May I ask who is the diocesan surveyor who makes the report?—This is Mr. Brodrick; he is an architect at Hull. I do not know that architects are the best men for that sort of work, because they have only an idea about making everything new; as to agricultural fences, of course, they are about the very worst people.

703. Are you not of opinion that, in the great majority of these cases, any land agent in the neighbourhood would be quite as competent and almost more suitable?—Much better. A country land-agent, or the agent of the squire, who is dealing constantly with farm buildings, would be much more suitable.

704. At Darrington, who was your surveyor?—Mr. Demaine, of York.

705. He, again, is an architect, is he not?—Yes.

706. You mentioned that you appealed in the South Cave case; did you appeal upon the facts or upon the law?—I appealed upon both.

707. And the offer which the bishop made you was to have a second surveyor sent over?—Yes.

708. Of course, he could not have settled the law for you?—He ruled against me upon the point of law, as, pending my appeal, there was a decision upon the point in one of the courts in London. The point was this, that under the 29th section of the Act of 1872, "Within three calendar months after the avoidance of any benefice, after the commencement of this Act, unless the late incumbent shall, under this Act, be free from

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from all liability to dilapidations, the bishop shall direct the surveyor, who shall inspect the buildings of such benefice, and report to the bishop what sum, if any, is required to make good the dilapidations." I imagined, not being a lawyer, that the three calendar months governed the whole proceeding, and that one was entitled to one's report within three months; but the court in London held that it was only a direction to the bishop to give his direction within three months; so that, practically, our liability is unlimited, because there is no direction as to when the surveyor is to go over or when he is to report.

709. But then you are to be allowed a month after he makes his report?—We are to be allowed a month after he makes his report.

*Chairman.*

710. Your complaint is that this weather operation might have occurred after you had left?—It did so.

Mr. *Dodds.*

711. You mentioned that the archbishop told you that the survey would cost from 10 to 12 guineas; can you tell us what the cost of that report was?—I have not had the bill sent in yet. I have only had the registrar's and the secretary's bills.

712. The 65 *l.* does not include anything for the surveyor's own charges?—Not at all.

713. In the case of the 18 *l.*, you do not know what those charges will be?—I do not know; I believe that it will be four guineas to the surveyor, and I think the other is nearly two guineas to the secretary.

714. Six guineas altogether upon the 18 *l.*; but you have not got the particulars?—I have not got the particulars of the surveyor's charges; he must have four guineas, and he may have more.

715. Is there anything in either of those reports having reference to the glebe land itself apart from the fences?—No.

716. You have spoken of assimilating the ecclesiastical property to lay property; of course you are aware that lay property, where a tenant for life dies, may be subjected to certain charges for waste?—We are not liable for mis-cultivation.

717. Would you think it unreasonable that incumbents, who are really tenants for life only, should be subjected to the ordinary law of the country with regard to waste?—Certainly not; I should be delighted to see our laws exactly the same, in all respects, as the lay laws.

718. As to breaking up old grass land, and so on?—Yes.

719. Then with regard to insurance, you think that you should be placed upon the same footing as owners of lay property; are you not aware that leaseholders in London are subject to liabilities for dilapidations under their leases?—No doubt we are liable to dilapidations; my complaint about insurance is the way in which we are bound to insure.

720. I am speaking not of insurance but of the actual repairs of premises; for instance, a leaseholder of property in London, under a lease for 99 years, is subject to covenants to keep the property in repair?—Yes, but he is not also liable as the freeholder.

721. But the lessor who has the freehold may send his surveyor to have the property inspected, and if it be not in repair he may give notice to his lessee, may he not?—My point is, that the incumbent is not only the leaseholder in one sense, but he is a freeholder also, and he has all the liabilities not only of the leaseholder but of the freeholder.

722. I did not follow you in the distinction which you appear to draw between ecclesiastical corporations and laymen with regard to insurance; you know the provisions of the Act of 1871 as to insurance?—Yes.

723. Have you acted upon those provisions?—My house is insured in my name and that of the Governors of Queen Anne's Bounty; I never take my certificate, simply because it has never been asked for. That gives a good deal of trouble to the registrars, and that is the one part of the law to which they carefully shut their eyes

724. You heard Mr. Elliot's evidence, did you not?—Yes.

725. Does it accord with your experience that the 54th clause as to insurance in the name of the Governors of Queen Anne's Bounty is disregarded by the clergy generally?—I think not; that has to be made a matter of return to the archbishop every year.

726. Perhaps you know that, in 1872, a Return was presented to Parliament, upon the motion of the right honourable gentleman the Member for Bradford?—I really do not know.

727. You do not know, as a matter of fact, that a large proportion of the clergy do not comply with that clause?—I do not.

728. You spoke of the large amount of private means expended upon parsonage houses by incumbents; have you had any experience of houses being made larger than they should be for the requirements of the living by incumbents who happen to be possessed of considerable private means?—No doubt there are such cases, and I think that the tendency is to make parsonage houses rather too large; but unfortunately the size of a man's house cannot always be measured by the length of his purse, but rather by the length of his family. A man with a very large family has to have a very much bigger house than a man with a small family.

729. No doubt; but if you have a small income with a small living, and a house fitted for a man with a family of 15 children, do you not overburden that living?—No doubt; but then there is a remedy for that.

730. What is the remedy for that?—The next man may have it all pulled down again, or so much of it as is inconsistent with the size of the living.

731. But, practically, could that be carried into effect in the majority of cases?—I have known it done; but in the majority of cases, as a rule, so very few clergymen live upon the income of their livings, that a good house will very often get a tenant for a bad living, when he would not have taken it except for the good house.

732. Are you aware, for instance, that the vicarage of Stockton was very much enlarged by the Bishop of Capetown when he was incumbent of Stockton, and was very much too large for the following incumbent, who had only the income of the living to depend upon?—I think those are cases which are exceptions; but, generally, the

Mr. *Dodds*—continued.

the houses that one has to live in are larger than you can live in upon the income of the living.

733. Are you acquainted with the provisions of the Bill which was introduced into the House of Lords in 1872 by Lord Egerton, with reference to insurance?—No, I do not remember to have seen it.

Mr. *Birley.*

734. You have spoken of the diocesan surveyors; have you got the scale of fees allowed to the surveyors in the diocese of York?—I have not.

735. You say you think it would be convenient if all qualified persons might act as surveyors, and not merely those who are appointed by the bishop of the diocese?—I think so.

736. And yet you spoke of a considerable divergence of views between the surveyor who surveyed in the case of Darrington and the surveyor of South Cave; would not that be very much aggravated if your suggestion were adopted?—I do not think that the present system gets over the difficulty better than the old system. Under the old system each man had his surveyor, and an umpire in case of difference.

737. I suppose that the surveyors are always paid, to some extent, in proportion to the amount of the dilapidations?—Not under the old system, but under the new system they are.

738. And, therefore, I suppose that there is rather a natural tendency to exaggerate the dilapidations?—It would seem so.

739. You told us, with regard to insurance, that you considered it a grievance to have to insure parsonage houses in the name of the Governors of Queen Anne's Bounty, as well as in the name of the incumbents?—Yes, because it is treating us as if we were not fit to deal with our own property.

740. But it is not your own property for ever?—But we are tenants for life; in fact, we are corporations, and no corporation is bound to insure its property in the name of anybody else but itself, and no tenant for life is bound to do it. The effect of that sort of regulation is to give us the idea that we are not to be trusted.

741. I should have said, if I were going to argue, that it shows that it is not your absolute property?—It is as much our personal property as corporation property, or tenant for life property.

742. A corporation never dies, but an incumbent may?—Putting us as tenants for life, our property is as large or larger than that of an ordinary tenant for life; and yet a tenant for life is not bound to insure in anybody else's name.

Mr. *Dodds.*

743. I see in the list of surveyors that three only are mentioned in the diocese of York, one at Whitby, one at York, and one at Hull?—Yes; I believe they are most conscientious men, and that they do all they can as far as they know it right; but they labour under the misfortune of having no definition to guide them.

744. Does it not appear to you that a much larger number of surveyors ought to be appointed in the diocese of York?—No doubt.

745. I see that for the diocese of Ripon there is only one surveyor, a gentleman who resides in Parliament-street?—Yes; of course all travelling expenses have to be paid directly or indirectly.

Mr. *Dodds*—continued.

746. You would have the number very considerably augmented in York, would you not?—Yes.

Mr. *Gregory.*

747. I think I understood you to say that you appealed in one case?—Yes.

748. And you had to pay the charges of the surveyor who was called in?—I withdrew my appeal when I found that I should have had to pay.

Sir *Sidney Waterlow.*

749. Returning for a moment to the question of insurance, I understand that you object to the name of the Governors of Queen Anne's Bounty being inserted in the policy jointly with that of the incumbent. Supposing that the house were burnt down, the policy being simply in the name of the incumbent, and that money were paid to the incumbent; and supposing that the incumbent was unwilling to rebuild, or delayed, what remedy would there be?—My contention is that we are put upon a different footing from the same class of property in lay hands, and treated as people who are not to be trusted. Supposing that a tenant for life insured the house and chose to keep the money, there would be no remedy; but I never can quite see why our property is to be treated upon a different footing from any other, and why we are to be treated as if we were not to be trusted.

750. Is there not a marked difference between incumbents as tenants for life of ecclesiastical property, and tenants for life of lay property, in this respect: that an incumbent is a tenant for life without a landlord, whereas a lay tenant for life has, in the reversioner, an individual personally interested to look after the property?—We have not only got the archbishop or the bishops, but we have the patron, who has a perfect right to come in and prevent our committing any waste during our incumbency. If I wanted to cut down all the trees upon my glebe, the patron might at once issue an injunction against my touching them.

751. But looking at the size of such a diocese as the metropolitan diocese, would it be possible for the bishop to have in any way a knowledge of what occurs in the residence of every clergyman?—But then there is the patron also, and there is the archdeacon and the rural dean; they have all power to see that things go on smoothly. The fact is that not only have we to insure in the name of Queen Anne's Bounty, but the money is always paid to them, and we have no sort of control over the expenditure of it.

752. Have you not a control in seeing that the money is spent in reinstating the property insured under the policy?—Only with the consent of the officials.

753. In working, does it not turn out that the incumbents practically control the details of the expenditure, and Queen Anne's Bounty simply pay the money over?—I can only say that my experience has been that I have not received a shilling, or given a single order about those two cases of dilapidations. I do not mean to say that the incumbent would not have a very considerable say in the sort of house that was rebuilt, but he would have no power to have a say. If the

Rev. *D. S. Wrangham.*

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Sir *Sidney Waterlow*—continued.

archbishop or the bishop chose to say, "You must build it again as you found it," the incumbent would be obliged to do so without alteration.

754. Would not that be the case of the tenant for life of lay property?—I doubt it very much.

755. The tenant for life must restore with the money paid by the insurance company, must he not?—Yes.

756. Then, I think that another complaint is that the word "dilapidation" is such an undefined term; do you think that it would be an advantage to have the word defined in the statute?—Certainly. I was talking to the Archbishop of York on the subject the other day, and I was saying that I was coming here to give evidence; and I said that one point that I should venture to bring before the Committee, would be the necessity of having some ascertained definition of what dilapidations are. He said, "Well, I must say I think that is very desirable; I think the time is now come when it may be done, and ought to be done."

757. Do you at all agree with the opinion which was expressed by a former witness that dilapidations should be divided into two classes, landlord's dilapidations, the cost of which should be cast upon the living, and tenant's dilapidations, the cost of which should be cast upon the out-going incumbent?—I think it would be a very fair division, but not one which I should particularly care to press, because one's great object is to get the law fairly carried out as it exists.

758. Assuming that we have settled the meaning of the word "dilapidations" and got it defined, you think that there would be an advantage in giving the executors of the out-going incumbent and the in coming incumbent the right each to appoint a surveyor, to be chosen from any surveyors in the locality?—I think that it would be a great advantage; because at any rate they would appoint a man in whom they had confidence.

759. Then who is to appear on behalf of the reversionary interest, because the out-going incumbent and the in-coming incum bent might agree to an arrangement which was not fair or just towards the reversionary interest; that is to say, they might agree upon a repair which would not be of that substantial character which would maintain the fabric sound for those entitled to the reversion?—I do not think that you can look beyond the two incumbencies.

760. Is it not possible that the two might agree to a repair which might not be sufficiently substantial?—I think that you must have the safe guard of having whatever is done approved of by some local man; the chairman of petty sessions, or the rural dean, or both.

761. You would not object then to the decision of two surveyors acting for the out-going and the in-coming incumbent being approved by some third party acting for the bishop, or on behalf of the living?—Not at all.

Mr. *Walter.*

762. Are you acquainted with any cases where, in consequence of the insolvency of the ontgoing incumbent, there has been no funds for paying the dilapidations which had accrued during the incumbency?—I do not know any personally; but it is a very common occurrence, no doubt.

Mr. *Walter*—continued.

763. Can you offer any suggestions to the Committee for meeting such cases; I have myself suggested a system of insurance?—I am afraid that it would be very difficult to get blood out of a stone.

764. Has it occurred to you whether, to meet future cases of that kind, a charge should be imposed upon the living upon each avoidance, a charge upon each incumbent of so much per cent. upon the buildings, in order to provide a fund which should be available to meet dilapidations in case of his death; in fact, that he should be deprived of the power of defrauding his successor of what was due to him?—If it was not very complicated, I think that it would be very desirable to have a fund. We are bound to insure our houses.

765. I mean a fund which should meet dilapidations, and prevent the future incumbent from having to pay them out of his own pocket?—Mine would be a suggestion in very much the same direction. We are bound to insure against fire now; and I suppose that there is no class of houses so seldom burnt down as parsonage houses. There must be a very large fund accruing from the insurance of parsonage houses throughout the country, which goes at present into the pockets of the different insurance companies. Supposing that we insured with the Governors of Queen Anne's Bounty, we should, in course of time, get a very considerable fund there, which might be lent out, upon terms to livings to which the Governors of Queen Anne's Bounty, with their present funds, will not lend; and we might so accumulate a fund, to help livings which are in difficulties. There is no time when a man has less money to spend than when he gets a living; it is, perhaps, the most expensive moment of his life; it is just the time when he can least afford to be paying a succession duty as well.

766. It would not be a succession duty; what I am suggesting is a per-centage, which would be a very moderate charge upon the annual value of the living, to provide a fund to meet future dilapidations?—I should think it would be a very good thing to get such a fund, if you could somehow.

Mr. *Monk.*

767. Do I understand you to wish to recur to the old law, which was in force before the Dilapidation Act of 1871, or do you wish to see this Act amended?—I should be perfectly content with this Act if it was amended; but I think the old law was quite as good as this, and better, and that it worked better.

768. Would you recommend that more definite instructions should be given to the surveyor in an amendment Act?—Yes.

769. To whom would you propose to give an appeal from the report of the surveyor; there is an appeal now to the bishop, but I understand you to say that you think the bishop has not time to consider that appeal?—I do not see why there should not be an appeal to some lay court; I do not know why we should not have an appeal to Westminster Hall for our property as well as for any other property.

770. Would not that very largely increase the expense of working the Act?—It was not found to be so under the old system; there were very few appeals; things righted themselves; but now we have, practically, no appeal at all.

771. You

Mr. *Monk*—continued.

771. You have the power of calling in another surveyor, have you not? — Yes; but that is, practically, no appeal, because the surveyors are all banded together.

772. Are you dissatisfied with the scale of fees in your diocese?—I cannot say that I am; if you are to have this machinery this machinery must be paid for.

773. Would you think it desirable to have an uniform scale of fees throughout the country; perhaps you are not aware that, in some dioceses, the fees are very much larger than in others?—It would be very much better, I should think, to have an uniform scale; there ought to be a limit.

774. Do you think that it is fair upon the new incumbent that he should be called upon to pay the cost of the survey, or should that be paid by the representatives of the late incumbent?—I should have thought that the simplest way was to have divided it.

775. At present the in-coming incumbent, I believe, pays the whole of the cost?—He does.

Lord *George Cavendish.*

776. Is it the fact that the condition of the glebe land is not taken into consideration by the surveyors in estimating dilapidations?—No, we are not liable for any waste in cultivation.

777. As we are considering the whole question of dilapidations, do you think that it is desirable that some provision should be made respecting the condition in which the land is left?—I think not; because that is a matter which the incumbent has very little to say to, his land being generally let. Of course we are liable to waste for cutting down trees and anything of that kind, and for opening mines. We may not open mines or gravel pits, and we may not destroy the glebe; but for the question of changing it from grass into arable, or *vice versâ*, we are not liable, I believe. We may cultivate as we like, but we are liable to waste if we cut up the glebe for gravel pits or mines.

778. You would not think it desirable to make any new provisions upon that subject?—So far as I am aware, no difficulty has ever arisen upon the subject.

Mr. *Beresford Hope.*

779. Did I correctly understand you to say that you think that, if Queen Anne's Bounty would undertake the insurance business, you might, so to speak, run the fire insurance and the repair insurance together, so that with a not very heavy scale of payment you might have something like a special insurance of parsonages all over England?—Yes; you might get a special fund together which might be lent out to incumbents who had to rebuild their houses.

780. Do you think, on the principle of live and let live, that might be made compulsory all over England, so that, by a very slight percentage upon the present value of the different livings, the whole difficulty would be removed except in the special case of the rebuilding of a parsonage, or some larger work?—I do not think that that would be quite fair, because the size of the houses, and the expense of rebuilding them, would not be governed by the size of the living.

Mr. *Beresford Hope*—continued.

781. But a rich man may have a little house, or a poor man may have a big house; however, the fire insurance companies do not consider that?—No, but each house has to be insured with respect to its value.

782. I do not mean an uniform payment from everybody, but an uniform system of payment, covering both fire and house insurance?—It would be a very good thing.

783. Are you in favour of opening the surveyorship, and not having a select list, but allowing the incumbent to choose his own surveyor?—I am entirely in favour of being allowed to choose one's own surveyor, because one's own man one would have confidence in, which one would not have in an utter stranger, who has no interest in you and no interest in his work, so that it becomes regular drudgery.

784. Did not the Bill, as it was originally drafted, substitute the archdeacon for the bishop?—Yes; but I do not see how you could very well do it, because it is setting up the archdeacon over the bishop. If you have an ecclesiastical authority at all, I think it should be the bishop. To my fancy, the appeal ought to be to some legal tribunal, such as the county court, or some such tribunal. The county court, I suppose, is very hard worked now; but there might be a commission of two neighbouring magistrates and the rural dean, or something of that kind; what we want is, a tribunal that will go into the question and take some pains to come to a decision about it.

*Chairman.*

785. Have you anything further to suggest than what you have already stated in your evidence before the Committee?—With regard to the three months' notice, something might be done, if this Bill is to be remodelled, to limit the time of our responsibility.

786. You mean to say that if a surveyor is sent by some other person over whom the incumbent has no control, that should be done within a time not exceeding three months?—Yes. Under the 12th and 13th sections of the Act, which deal with the inspection at the time the living is either full or under sequestration, the bishop at any time, in case of the benefice being full, or within six months after the sequestration, in the case of sequestration, may direct that "the surveyor shall, as soon as conveniently may be after such direction, inspect, and within one month after inspection send to the bishop a report of the result of the same, and shall send a copy to the incumbent." But when you come to a living vacant by death, then within three calendar months after the avoidance of the benefice, the bishop is to direct an inspection. As the law is laid down now, the bishop need not direct it for three months, and there is no direction when the surveyor is to go at all, and there is no time specified as to when he is to report; so that practically the responsibility of the deceased or departed incumbent is altogether unlimited. I cannot help fancying that the intention of the Act was that the three calendar months was to include the whole thing.

Mr. WILLIAM HEBB, called in; and Examined.

Mr. *Hebb.*

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*Chairman.*

787. I THINK you are a Solicitor at Ross, in Herefordshire?—Yes.

788. You have had your attention directed to the working of the Ecclesiastical Dilapidations Act, have you not?—Yes, I have had a good many clerical clients who have been mixed up with it.

789. Will you detail to the Committee the case which you have referred to of a Mr. Edman, and state what you consider to be the hardship in his case?—Mr. Edman was instituted to a little living called Muker, in the diocese of Ripon, in 1864. He was not able at that time to get any dilapidations from his predecessor through some mistake that was made, I think, at the bishop's registry. Between the time of Mr. Edman's institution and the death of the clergyman, who had been there for a long time, a gentleman whose name was Dawson was instituted, and he did not read himself in within the six months required by the Act of Uniformity. There was then a doubt as to whether he was incumbent or not; but, at all events, the bishop suggested that this Mr. Dawson should execute a formal resignation of the living, which he did; and then there was a very grave doubt, which was not cleared up by anybody, as to whether Mr. Edman's remedy for dilapidations was against Mr. Dawson, or whether it was against Mr. Lowther, who had held the living for a long time. It seemed that whichever person had been sued, whether we had sued Mr. Dawson, or whether the representatives of the late Mr. Lowther had been sued, in all probability we should only have got a nonsuit in either case; and the bishop then said that he thought it would be better not to litigate the matter.

790. In the end the bishop advised his doing nothing and getting nothing?—Yes.

791. What was the value of that living?—The value of the living then was about 120 *l.* a year. The house was not in a good state of repair, and Mr. Edman wrote to the bishop about it; and then Mr. Edman was allowed to live in another house. I am not quite sure what the practice is, but I think that a commission is directed to three beneficed clergymen who report upon the house, and the incumbent is allowed to live out of it if they are satisfied that its unfitness was not caused by any neglect or defect on the part of the then incumbent.

792. Part of this income was derived from property in Nidderdale, was it not?—Yes.

793. How far off was that?—I should think about 30 miles over the hills.

794. That, I suppose, was in a bad state of repair, as well as the house?—Yes.

795. Did Mr. Edman get preferred to another living?—Yes, since the operation of this Act he was preferred to another living in Northamptonshire; and immediately the surveyor of the Ripon diocese made his report to the bishop and he reported that 395 *l.* 2 *s.* 10 *d.* I think, was the sum that Mr. Edman was called upon to pay for dilapidations. I took the opinion of Mr. Walter Phillimore, the chancellor of the Lincoln diocese, and he was clearly of opinion, as a matter of law, that as to one particular dilapidation there was no responsibility; but the diocesan surveyor had a different opinion, and I think over-ruled the courts above.

*Chairman*—continued.

796. What I understand is, that in this living that Mr. Edman went to in the diocese of Ripon, where he got nothing, he was charged on leaving 395 *l.* 2 *s.* 10 *d.*, and that that was confirmed by the bishop?—Yes. I took exception to the surveyor's report, and the ending of it was that it was transferred from the bishop's secretary at Ripon to his lordship's secretaries in town, and they wrote and said that if Mr. Edman chose he could have a second surveyor, and also take the opinion of counsel upon the law point, for which he must deposit the money beforehand, and that whatever was the result of counsel's opinion or of the second surveyor's report, the bishop had made up his mind, and that 395 *l.* 2 *s.* 10 *d.* would be the amount of the order. I then wrote to the London secretaries that I had no alternative but to withdraw my objection if it was to produce no beneficial result.

797. Was this within the month?—The objection was made within the month.

798. Did you within the month receive this reply, that, whether you appealed or not, the bishop had made up his mind to make the order?—Yes, within the month. I made my objections to the report, and then there was a long correspondence about it; and I think about half a year after the surveyor had made his report I had this communication from the bishop's secretaries in London, that whatever the result of the second survey was, or the opinion of counsel, the order would be made as the bishop had made up his mind. On that, I, of course, had no alternative but to withdraw the objection, and I did so; and then the order was confirmed.

799. What happened then; did your client pay the money to Queen Anne's Bounty?—My client then was enabled with the assistance of his friends to pay the 95 *l.* 2 *s.* 10 *d.* to Queen Anne's Bounty, and I think that the new incumbent made an application to Queen Anne's Bounty for a loan, and that was refused.

800. You say that the new incumbent made the application to Queen Anne's Bounty to get a portion of this sum?—Yes, for a loan of 300 *l.* The new incumbent was quite satisfied that the dilapidations had not accrued in Mr. Edman's time, and 95 *l.* was the amount that Mr. Edman was able to get from his friends, for he had no money of his own, and that was paid into Queen Anne's Bounty. Queen Anne's Bounty then declined to make any advance to the new incumbent.

801. Then, they having declined to make any advance to the new incumbent, it became a debt under the Act from Mr. Edman?—Yes.

802. What did he do?—Mr. Edman did nothing; he waited to see what the new incumbent did. Although the Bishop of Ripon suggested to Mr. Edman that there should be no law proceedings, he strongly recommended the new incumbent to persevere with the litigation against Mr. Edman, and that was done; and the ending of it was that Mr. Edman had to file his petition in liquidation. That went on for some time, and his creditors were all of them willing to accept 2 *s.* in the 1 *l.* (I think that that was what was offered), excepting the new incumbent, and he declined to take it. But, as good luck had it, just when some application, I think, was

to

*Chairman*—continued.

to be made to make Mr. Edman a bankrupt, a relative of his died, from whom he had some legacy, and then I think that some terms were made, not by me but by my London agents, with Mr. Caldwell, the new incumbent, and the matter ended in that way.

803. Then what you mean to say is, that Mr. Edman having taken this living, and having got nothing for dilapidations, became, when he left it, liable, under the Act, for the whole amount, and that drove him to a composition with his creditors?—That is so.

804. And that he had no remedy by appeal of which he could avail himself?—No.

805. In that case where did the surveyor live?—The surveyor of the Ripon diocese lives in London, in Parliament-street.

806. You had to communicate with him, I suppose, through your agents?—No. When I found that Queen Anne's Bounty would not advance the money for the new incumbent, I myself made a purpose journey and saw the secretary to Queen Anne's Bounty, and Mr. Nicholson (I think the gentleman's name was) the surveyor; but no good came of it.

807. What happened in Mr. Edman's new living; did he get dilapidations there?—Yes, there was no difficulty there. The late rector was a gentleman who had been there for about 50 years, but the dilapidations in his case were considerably less than Mr. Edman's, who had only been at Muker for eight years.

808. Do you know of any other cases where you think the Act has acted either unfairly or harshly?—In the same diocese there is the case of Thornes, near Wakefield. The vicar there, a Mr. Jones, had a new house, which was built by his predecessor, and when Mr. Jones left he had a surveyor himself to see that all was in proper order, because he was afraid of this Act; and he had it put, as he considered, in perfect order. The diocesan surveyor came, and he reported that some repairs should be done to the roof, and that a lot of trifling things should be done, such as new keys to the locks, and locks repaired, and such things; and Mr. Jones had to pay 90*l.* I think that the diocesan surveyor expressed himself to Mr. Jones that he did think that it was rather a hard case, because the whole thing had been surveyed just before Mr. Jones went away, and reported to be in good order by a local builder, I think.

809. You have studied this Act, I suppose, a good deal?—Yes; I have had a good deal to do with it in my practice.

810. What remedies would you suggest? Would you adopt the view which was taken by Mr. Elliot, and allow parties to choose their own surveyors if they were vouched for as reputable men?—I think that it would be a good plan.

811. Can you suggest any plan of your own?—I should see no objection to having the surveyors as they are, if there were some reasonable appeal from the report of the surveyor, or from the bishop's order.

812. Would you have more surveyors in the localities?—I think that they should be local men living somewhere near, or in the diocese, at all events.

813. With regard to the appeal, would you make the appeal to the bishop, or to any other jurisdiction?—It is scarcely worth while appealing to the bishop, because he always confirms the order.

*Chairman*—continued.

814. Would you appeal to a lay or to an ecclesiastical tribunal?—I think a lay tribunal would be better, or perhaps the rural deans of the neighbourhood, or the county magistrates of the division.

815. If you keep the surveyors under the Act, who do you think should elect them?—It seems to me reasonable that the clergy who have to pay them should elect them.

816. You think that the election, instead of being by the rural deans, should be by the clergy themselves?—I think so certainly.

817. In each rural deanery?—Yes, or in each archdeaconry.

818. In cases of buildings that had actually tumbled down and had been left to go to waste from not being wanted, do you think that there ought to be a restriction on their being compelled to restore them again?—No; I think that it would be better to allow them to remain down. In the case of Mr. Edman which I have mentioned, Mr. Phillimore was of opinion that he was exempt, under Section 70, because the buildings had been down for several years. I believe they had fallen down in Mr. Lowther's time; certainly they were never in existence in Mr. Edman's time.

819. Then, although those buildings had been down for several years before he came there, he was still charged with their reconstruction?—Yes, he was called upon to rebuild them. There was nothing remaining to guide the surveyor even as to the material of which they were constructed; but Mr. Edman was directed by the report to build them of stone, strong and substantial huts and pigsties, and such things as they have on the hills in Yorkshire.

820. Did Mr. Phillimore's opinion coincide with your views upon the 70th section, that Mr. Edman, having come and found them actually gone, was not liable for dilapidations upon them?—He did not speak positively, but he thought so. He had a doubt whether the words "pulled down" could be extended to fallen down.

Mr. *Monk.*

821. But the bishop decided against him?—The bishop decided against him.

Mr. *Beresford Hope.*

822. What bishop was it?—The Bishop of Ripon.

*Chairman.*

823. The same bishop who had himself advised Mr. Edman not to take any proceedings for dilapidations?—Yes, the same bishop.

824. Your suggestion is that, if the Act is kept in operation, the surveyors should be local men?—Yes.

825. And that the rural dean or archdeacon should have a greater power than he has at the present moment with reference to appeals?—I think so, certainly.

826. Would you be satisfied with an appeal to the archdeacon or would you prefer a lay tribunal?—One does not like the idea of an appeal from the bishop to the archdeacon, because the bishop makes the order.

827. You think that a lay tribunal would be better?

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*Chairman*—continued.

better?—It is perhaps only a sentiment, but one does not like the idea of appealing from the bishop to the archdeacon or to the rural dean. If the archdeacon or the rural dean made the order in the first instance, I think it would be a very good plan.

828. Then to whom would you appeal in case of difference?—I think that the county court judge or the bench of magistrates would be as good as anybody.

Mr. *Walter.*

829. Was the state of the parsonage taken into account, and were the dilapidations valued when this gentleman was appointed to the living? They had been.

830. Do you know what the amount was?—I do not. The gentleman who did not read himself in had the dilapidations valued; but I have not been able to get a copy of the surveyor's report.

831. As I understand, the hardship in this particular case was not the amount at which the dilapidations were valued to this gentleman who had the misfortune to be called upon to pay them, but the fact that he was unable to recover them from his predecessor?—That is quite so; but in addition we sent our own local surveyor who said that, in his opinion, all these things could be done for half the cost that the gentleman living in London said would be required.

832. You think that it was a case of exaggerated amount?—I think that it arose because the gentleman living in London did not take into consideration the price of material in Yorkshire, and the fact that there was ample stone upon the glebe for the repairs. That is only my opinion, but it seemed to me to be so.

Mr. *Monk.*

833. Was the previous incumbent instituted by the bishop?—Yes, he was instituted.

834. Would not the present incumbent have been able to recover the dilapidations from him?—I am not quite sure whether he would or not. He was instituted, but he did not read himself in; and under the Act of Uniformity, I think, he was bound to do that to get into possession of the temporalities.

835. Do you know whether he recovered any dilapidations from his predecessor?—No.

836. Did he take any steps to obtain them?—Yes, he took some steps.

837. Why was he unable to obtain them?—I think that he did not care about it; he was only instituted by the bishop, and he did not read himself in, and the bishop called upon him to resign; so, having resigned, he did not take any further steps in the matter.

Mr. *Birley.*

838. This seems to have been a case of peculiar hardship; but I do not think that you have given the Committee any suggestion for avoiding it under the Act of Parliament?—Mr. Phillimore and myself hoped that the 70th Section would have met the difficulty; we were under the impression that the first part of Section 70 could have been extended, or would have extended itself, or that the bishop would have extended it to include in the words "pulled down" buildings that had fallen down.

Mr. *Birley*—continued.

839. But it might very well be a case in which the buildings had not fallen down, and yet the dilapidations might be as extreme as those that you have described?—Yes, it might have been so; I think that was so; I took the opinion of Mr. Phillimore before I made my objections to the bishop; and then, having had his opinion, and being fortified, as I hoped, by his opinion, he being Chancellor of the Diocese of Lincoln, I made my objections, founding them upon his opinion.

840. And then it was that you had this notification from the secretary?—Yes, that was some time afterwards; I made my objection to them within the limited month, but there was a very long correspondence about it; the new incumbent, I think, saw the fearful hardship that it was upon Mr. Edman, that he should be called upon to restore all these things in the way required by the surveyor's report, when he had himself received no dilapidations; and so it extended over five or six months, and then the bishop confirmed the order, not refusing to let me have the opinion of counsel to be named by him, or to have a surveyor named by him; he merely said that I could have it if I liked, but the order would be the same whether I did or not. The incumbent was kind enough to send to me the correspondence that he had with the bishop, and the bishop was urging him to proceed against Mr. Edman; I saw it.

*Chairman.*

841. Have you any further suggestion to make to the Committee?—I heard some gentleman examined as to pulling down buildings. In the case of Hannah-cum-Hagnaby and Markby, in Lincolnshire. there was an old cottage very much dilapidated, and the new incumbent wrote to me to know what to do about it. The diocesan surveyor said that it would take 105 *l.* to restore it, and we applied to the Bishop of Lincoln to have it taken down; but the Bishop of Lincoln thought that it would be the duty of the incumbent of Hannah to pay the 105 *l.* into Queen Anne's Bounty, and then, having paid it, to have the building down; but he could not consent to having the building left down until the money had been paid into Queen Anne's Bounty. The incumbent paid the money into Queen Anne's Bounty, and then the bishop allowed the building to be removed, and there is about 105 *l.* (I am not quite sure as to the sum) towards building a house for this living.

842. So that, in that case, the 70th section did not operate at all for the safety or protection of the incumbent?—No, nor Section 71. The surveyor for Lincoln said that this hovel was unfit for habitation, and was not of the slightest benefit to the living, and suggested that it should come down.

843. The surveyor reported that this was neither fit for habitation nor beneficial to the living?—Yes; but still the Bishop of Lincoln thought that the money must still be paid, and then the place could be pulled down. It seems to me that if clergymen accept livings they must pay the money into Queen Anne's Bounty, whatever happens, and then take the building down after. I have no doubt that the Bishop of Lincoln was advised by his chancellor, and his opinion was

that

*Chairman*—continued.

that until the money is paid by the succeeding incumbent you cannot take the buildings down.

Mr. *Birley.*

844. Then what is done with the money?—It remains in Queen Anne's Bounty; it is there now towards the erection of a house.

845. Then it is to be applied to the benefit of the living?—Yes, but the hovel that was pulled down was not of the slightest benefit to the living.

*Chairman.*

846. Was there no house to that place?—No, there was no residence, and this hovel was a long way from the living itself, 10 or 12 miles.

847. Have you any other suggestions to make to the Committee?—The only suggestion that I would make would be, that in cases of that kind it should be more compulsory upon Queen Anne's Bounty to advance the money instead of its being optional as at present.

*Chairman*—continued.

Mr. *Hebb.*

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848. You refer now to the first case of Mr. Edman?—Yes, and to similar cases. Of course there should be some guarantee to Queen Anne's Bounty that there is no collusion.

849. Who was the patron of this living in Yorkshire of which you spoke first?—The vicar of the same parish; it is a district parish.

850. It was a new district carved out of another parish?—Yes.

Mr. *Beresford Hope.*

851. It could not have been very new, because Mr. Lowther was there for 30 years?—It was a chapelry created soon after the Reformation, and a chapel built; and I think 30 or 40 years ago it was separated; but the Marquis of Blandford's Act regulated it.

852. In the hilly country such as yours, or North Derbyshire, there are many of those half and half parishes, are there not?—That is so.

The Rev. CHARLES WALKER SIMONS, called in; and Examined.

*Chairman.*

Rev. *C. W. Simons.*

853. I THINK you live in the diocese of Gloucester?—I am in the Gloucester diocese, though my post town is in Worcestershire. I am rector of Saintbury, near Broadway.

854. I think you have had some experience of the working of the Act of 1871?—I have had some experience of the old Act; I was an incumbent under that Act, and I have also had experience of the new Act as an in-comer and an outgoer. I may say briefly, by way of introduction, that, as regards the old Act in that parish, the widow of the incumbent had nothing whatever to pay over to me, and therefore I let the thing pass over. Under the new Act, I should probably have rather pressed her, because I must have found the money myself; I had not to do it in that case. The building was a very poor one, and, with the bishop's consent, after a time it was sold, and the money was invested in Queen Anne's Bounty towards the building of a new parsonage house. During my incumbency there I never took a penny of interest from that fund, which I believe I might have done, but I left it to accumulate.

855. Where was this first living of which you speak?—Cradley, in Worcestershire.

856. Was there a parsonage house there?—There was this very small house. I do not know whether it had been a parsonage house or not, but it was simply a cottage. I did not live in it; I lived in a house that I rented.

857. And, by the consent of the bishop, this old house was sold?—By the consent of the bishop it was sold, and the money derived from it was invested in Queen Anne's Bounty towards a new parsonage house.

858. When did you leave that parish?—I left it in 1856. Though it is not connected with the Ecclesiastical Dilapidations Act, there is one anecdote in reference to that old parish which perhaps may interest the Committee. The church of which I was incumbent, was one which was consecrated in 1792, and an old squire from the other end of the county said to his son the day before this consecration, "Jack, you shall go

*Chairman*—continued.

over to Betty Taylor's Inn, at Halesowen, and put up your horse there to-night, and stay for the consecration of Cradley Church, for there is such a thing going to take place to-morrow as you will probably never see again as long as you live." So much for the state of church building and church consecration in 1792. I left Cradley in 1856 on account of my health; I broke down entirely, having built schools, including the value of the site, which cost 3,000 *l.* there, and done a great deal also for the church, for which I had made myself responsible.

859. What occurred with regard to dilapidations?—There were no dilapidations. I received an income of 120*l.* a year, and paid a curate out of it; this benefice has been increased in value.

860. Then where did you go to?—I came to Halford Bridge, in Warwickshire, and there I took the curacy and sole charge for two or three years, and the bishop promised that when it fell vacant I should have it, and that he would give it to me when the incumbent resigned. He, the incumbent, is still living, I believe, at the age of about 87, but he resigned in 1859.

861. When did you leave that parish?—I left that three years since, in 1873.

862. What happened when you left that place?—Of course the dilapidations were there assessed. Now I come to the new Act; and, first, I may say that I feel very strongly that it is a great injustice to the clergy. I may also say that I see that there are many surveyors present, and no wonder, as the Act is to them, judging from the fees charged, as good as a small bishopric, and very much better than a small deanery, as I think I shall be able to prove. As regards the working of the Act, and my experience of the surveyors, although I have been a public schoolboy, and at the University, and of course passed under the ordeal of a bishop or a bishop's chaplain, I never knew anybody so despotic or tyrannical as the surveyors appointed by the bishops. Previously to my leaving the Warwickshire living a friend of mine offered me the living of Saintbury. I told a carpenter to go into the

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*Chairman*—continued.

house and do all that was necessary in the shape of repairs. I had had the whole of the glebe buildings thatched, the barn had been thatched; I put new doors on the far side; there was no hovelling for cattle at all to it when I went to the living, and that I put up; I left the fences and everything in certainly tenantable repair. The first time the surveyor went over with me he said that there was nothing required to be done to the glebe, and afterwards I think all he said was that there were a couple of posts and a gate wanted re-hanging, and a catch wanted to another place. I sunk a well for those buildings, and that he said wanted a new centrepiece, which it did. That I did not object to at all. But I now come to the house. I lived in it when I first went to the living, but I afterwards bought a house and property in the place; it was quite a small parsonage house. I leave you to guess that from the rent; it never fetched more than 19 *l.* The tenant who went out at the time, a widow lady, was perfectly satisfied with it, and I myself considered that that house wanted very little doing to it. I am a practical man; I may say that, unhappily, I have had something to do with receiving thousands of pounds of rental, most of it for other people; and I have looked after the whole of this property, and the cottages and farmhouses connected with it, and not a penny of it has been spent without my supervision and my knowing the cost of things; and I thought I allowed of a very large margin indeed if I put down anything more than 30 *l.* for the dilapidations of this house. The tenant was perfectly satisfied, and wanted nothing doing. Those dilapidations were assessed at 86 *l.* I did not appeal; I did not want any further bother with the new incumbent, which the surveyor led me into, I do not hesitate to say, through not knowing what ecclesiastical law was. He was afterwards obliged to acknowledge himself that I was right, and he was wrong. I have never had a quarrel but with one clergyman, and that was through the bishop's surveyor; I did not appeal. I very much regret now that I did not appeal; but in every case that I pointed out, when I said, "You are wrong in a matter of law, and you are wrong in a matter of equity;" he said: "It will cost you a great deal more in appealing." I got rather frightened about this, and I did not want to have any law if I could possibly avoid it. So directly I got the account in, I paid it within a month, or something like that, and there, so far as the payment was concerned, things ended.

863. What was the income of this living in Warwickshire?—I think it was about 250 *l.*; but whilst I was there I and my friends restored the church at a cost of 900 *l.*, and built new schools, for all of which I was responsible. In the case of my present living the dilapidations were valued at 214 *l.* 12 *s.* 6 *d.*, although this will not anything like cover the amount of money that I shall spend, because I am a fellow who likes to have buildings and things substantially tidy about me, unnecessarily so; but I have spent already more than 300 *l.*, and I certainly shall spend another 100 *l.* besides; I am going to put up some new buildings, for which I have the permission of the patron and the bishop to cut down a few trees. I consider that the surveyor awarded me quite sufficient, and perhaps too much; I think that what are called dilapidations are most unfair, and that they press most heavily upon the outgoing men; and that they would, under ordinary circumstances, never be thought of. I can show you presently some most frivolous things that the surveyor mentioned in my late parish; I do not complain about the amount which I received in my present parish; I think that it was rather a large sum, rather over what I ought to have received than under, and what any ordinary possessor of the property would not have laid out; but, as I tell you, I have spent 300 *l.*, and I shall spend at least 100 *l.* more; but I am perfectly satisfied with the amount which was awarded, and which was paid without any difficulty. Perhaps I had better allude here to the fact that I have not paid that money into Queen Anne's Bounty, and I will tell you why; I have to pull a crow with that surveyor, which is this: he sent in a survey of some of the buildings upon the Saintbury property, which he never saw and never went near; that I can produce evidence of; the poor fellow, I hear, has since gone to the bad; I mean financially, and has had to make an arrangement with his creditors; he is not surveyor now; I know nothing more about him. He wrote to me asking for six guineas, and at the same time recommending some builder, and offering himself as architect in this case; a thing which I most thoroughly object to, and which is liable to be very much abused. Now, perhaps, I had better go back again a little; I sent to the Chairman sundry objections to the Act, and if you do not object to my reading them I will do so, making at the same time a small running commentary. "Firstly, the incumbent has no voice in the selection of the surveyor, whether he be the retiring or the in-coming man. Secondly, the surveyor may be your friend or foe, and practically (and as a general rule) you must accept his valuation whether fair or unjust, and oftentimes, either as architect or land agent, he is interested in the new comer." That is a thing which I very much object to. "Thirdly, the charges under the Act, more especially those of the surveyors, are most exorbitant, whether as regards the ability of the clergy to pay the same or as regards the work done." In fact the fees are, to my mind, a perfect disgrace; I do not know which of the law lords it was, but one of them, I am told, said "he wanted to know whether the clergy knew how they were saddling themselves with this Act," when it was introduced. We never heard a word about it, either from the bishop or the rural dean or anybody else; and it is only by experience of the working of the Act that I know anything at all about it. "Fourthly, in the case where a clergyman has availed himself of the Act, if he die next day, his widow and children do not get one penny for unexhausted improvements. Fifthly, where there are no effects from the deceased rector, the surveyor is obliged to value the dilapidation on the benefice, and the new incumbent must pay the same, as well as the surveyor's and other charges under the Act, into the Bounty Office. Sixthly, through the working of the Act, if you pay the money into Queen Anne's Bounty Office your repairs through not being able to pay 'little' men cash who would do them from 10 to 20 per cent. cheaper, you are obliged to have a 'large' man (one of capital), who charges accordingly." And here I may just observe

*Chairman*—continued.

observe that at the very time when a poor incumbent needs his money the most he is tied up in every way. I cannot say that I am a poor incumbent, because I am not, but on my presentation to Saintbury I paid 27 *l.* 19 *s.* 2 *d.*; I paid the bishop's secretary 10 *l.* 14 *s.* 10 *d.*; I paid the surveyor 6 *l.* 6 *s.*, and I paid first fruits 19 *l.* 6 *s.* 11 *d.* Supposing that I had been a poor man, and also supposing that my predecessor had no funds, I should have had to pay up at once 278 *l.* 19 *s.* 5 *d.*, and then I should have had to go into the market and put up those buildings without 1 *d.* in my pocket, unless I had borrowed it from the bankers. "Seventhly, in case you do appeal against the surveyor and you gain the day, you have not only to pay the additional costs, but you have no redress against the surveyor who has put you to the additional expense." I consider that the Act is carried out, as I have already stated, in the most despotic way by the surveyor, and neither from clergy nor laymen have I ever heard any approval of the Act. I will give you the opinion of a Member of your own House upon it before I have done; "lastly, the Act is actually preventing men from taking Holy Orders." I have only one son and I rather thought of his taking orders. I left it to the boy, and he did not care very much either one way or the other. But I assure you that with such an Act, and with the vexatious things connected with the working of it, I would not let him take Orders. Those are some of the objections; I have others, but those are, I think, the principal ones.

864. What suggestions do you make as to the amendment of the Act?—Firstly, I would sweep away the present Act entirely, as it is most unjust and tyrannical, and I would restore and amend the old one; secondly, I would minimise ecclesiastical dilapidations as much as possible, not allowing many of the absurd and unjust things that now are called such, and I would make tenantable repair meet all legal requirements. Where the surveyor under this Act would say, "You must do this," and insist upon your doing it; although you may have got no money from the previous incumbent, your tenant would be ordinarily perfectly satisfied with a very little being done; and the thing would go on just as well for 20 or 30 years more. I say this as a practical man. Thirdly, I would not let the bishops have anything to do with the working of the Act. I am sure that their Lordships have plenty to do as regards their spiritual functions; and for another thing, I think that they know nothing of bricks, boards, and buildings. I would define what dilapidations are as nearly as I could; I would let each person interested, as under the old Act, appoint his own surveyor, and in case of non-agreement, name a referee whose decision should be final, subject perhaps to an appeal to the county court judge or some local jurisdiction. I want to localise everything, as it will lessen the expenses.

865. Your view is to give freedom of selection to both parties?—Undoubtedly; I farm the greater portion of my glebe, as I did where I was before; and I said to the outgoing tenant, "We will do whichever you like; we will each have our own valuer, or we will take any respectable man whom we agree upon, and divide the cost;" and we had to pay 15 *s.* each; if we had employed a diocesan surveyor that would have been 12 *l.*, I suppose, or something like that; fourthly, I would make the churchwardens, coupled if it need be, with the senior acting magistrate of the district, the custodians of the temporalities of a benefice when vacant; fifthly, I would trust the clergyman (as in days gone by) to spend the money which he receives for dilapidations to the best of his knowledge for the true benefit of the living, and not treat him as now as if he were a minor, or lacked the essential of an English gentleman, honour and integrity. That there may have been some instances of abuse in this, I will not deny, as I know there have been, but I believe that they have been very few and far between, and there is also a very strong public opinion, helping to keep a man up to the right mark, and you commit a very great injustice by carrying on such an Act as we have at present; if you will not trust a clergyman as of old, I think the only thing is to appoint a board, or some such thing to come into his house, and say what is to be done, and what he must pay for, and not do as you are compelled to do under this Act. The surveyor says, "the dilapidations are so much;" you receive it, and you find that it is not anything like the amount necessary to do what he requires from you, and he insists upon your carrying this out when you have not a sufficient sum awarded to do it with, unless you furnish it out of your own pocket; that is what you are liable to now; I would either appoint a board, or I would trust the clergyman, and if he is not thought fit to be trusted, then goodbye to the kind of men who have hitherto, for the most part, taken Holy Orders in the English Church. I said I considered this Act bad; I consider it also bad as regards the different people that have a milking out of it; there is the surveyor who has the largest milking; he comes about three or four times. Then there is the bishop's secretary; then there is the registrar; and then, if I read the Act rightly, which I am not quite sure about it, I think that Queen Anne's Bounty can charge you for depositing your money there when you want to draw it. I went to Queen Anne's Bounty after I had received an order to pay the money in, which was two years after I had been in the benefice of Saintbury; I came up to London purposely about it; I had talked with a good many people, and I felt that the Act was a very bad one, and I was determined to throw difficulties in its way. I went into the office, and I asked to be introduced to the secretary, and I saw a very civil and polite gentleman; I said that I considered the Act very unjust, and that I had paid six guineas already, and I did not choose to pay any more; that did not include the charge of the bishop's secretary and the registrar, and I said, "I have spent all this money and a good deal more, and I can give you vouchers; it is not the amount of money, but I will not pay it on principle; I am determined to fight the Act." He said, "Now do, sir, pay it in;" I said, "If I pay it in I have to go to the surveyor and to pay to get it out again;" He said, "You had better pay it in, and make your row afterwards;" I said, "No, I will keep the money in my pocket, and have the row before."

Mr. *Monk.*

866. What was the result?—The result was that I did not pay; I have spent the money on

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on the repairs of the glebe buildings, and I am willing to show any gentleman my accounts.

867. Did you pay the bishop's secretary's fees and others?—I only paid the first demand upon me; I should have had to pay everything over again, and perhaps two or three times, if I had fully obeyed the Act; the surveyor would come to me when I thought everything was done, and say, "You must do so and so"; and then go back and come again and charge another three sovereigns, or whatever it may be.

868. Have you received a surveyor's certificate?—No, I have not; when I went to Queen Anne's Bounty they told me that this fee which I had paid in the Diocese of Gloucester was an overcharge; whether it was so or not I cannot say, but I thought "That is another reason why I should not pay any more; perhaps it will be an overcharge here"; and so I would not pay. Now, to come to the details: in Halford Bridge I said, "I object to the surveyor having anything to do with it either as land agent or as architect." I went over to the present incumbent, and I said, "I consider myself perfectly aggrieved about Halford, and that I was thoroughly done there, through the working of the Act, and I have no doubt that you have been pretty well done too; now tell me how things stand; what were the surveyor's bills?" "Oh, dear," he said, "don't talk to me about those things; I wish to goodness I had never had a penny of dilapidations, and I had never had anything to do with it, what with the payment and the annoyance," and it produced a quarrel between us; I mean when the dilapidations were first assessed; I will tell you why, because I have come here to speak out as a man about these things. There were two charges, one for 12 *l.*, and the other, Mr. Wilmot's, of 19 *l.* 2 *s.*, and Mr. Wilmot is, I believe, in this room, and he can deny it if he likes; 86 *l.* was the amount which I paid, and the surveyor's charges connected with it were, directly and indirectly, 31 *l.* 2 *s.* out of 86 *l.* received. He will come in, I know, and say part of these charges were as a land surveyor. A local land surveyor where I lived for 18 years would have done everything connected with it for three guineas, and been thankful for it; and this 31 *l.* 2*s.* was paid by one of my brother parsons, who is not troubled, I believe, with an overplus of money; the surveyor paid 2*l.* 15*s.*, I believe, for some charges, but that is all that I think would fairly come off that 31 *l.* 2*s.*; then Mr. Hooper, the bishop's secretary, received 2 *l.* 19 *s.* 10 *d.*; why he did not make it 3 *l.* I do not know. This dilapidation put me to a great deal of expense in the shape of journeys to and fro, because the surveyor did not understand what the law was. He told my successor that I had no right (when I had a perfect legal right) to sell the manure on the glebe land, or to do what I liked with it, or to sell the hay which I husbanded there. (Those things were sold at Saintbury, and I did not object, as I knew it was right.) But that made a tremendous row between me and the incumbent; he thought he was an aggrieved man; he thought I was cheating him, when that was the last thing in the world in my mind. I asked him to my house, when he came there, and he stopped in my house two or three days, and I gave him every information about the living, and if ever a clergyman

Mr. *Monk*—continued.

treated a brother clergyman kindly I did; but through the surveyor's ruling we quarrelled. I said at Christmas time, "Here is my hand, and there is an end of it." But I will show you what the surveyor landed me in. I had journeys to Birmingham, and I can't tell you where, about these things, so that I had to pay another 5 *l.* in the shape of journeys to put things right, because the surveyor did not know what the law was. Although it is not connected with that, I may mention, as regards insurance, that I always have insured the ecclesiastical property, a thing, I think, that we are bound to do in every way, and generally, as far as I understand, all the clergy do so. I told you that I spent a great deal upon the church and upon the chancel; I entirely reroofed it very perfectly. The woodwork was new; it was covered with new Broseley tiles; there was no spouting before, and I put a good substantial iron spouting round it. Here the dilapidations came in very heavily, and the surveyor says that I am to put two coats of paint on, and I am to clean out the spouts. It did not want painting at all, and that set my back up, after all I had done. Then there were new locks to the doors at the rectory; many of those doors had never had a lock on before, and yet the surveyor insists upon their having new locks. The rectory there was a very old house, and had some of those old-fashioned spindles. This surveyor lives in Birmingham, and his modern notions were, of course, to have everything spic and span and Brummagem, and those long spindles had to be cut short and suited for modern ideas. Those are things that I object to. Then there was no piggery in this place. I put up one. I did not put a particle of paint on, as I did not think it necessary. Everything else he insists shall be twice painted with oil and lead; the piggery he insists shall be painted three times, whilst everything else was to be painted twice. Whether he thought that it was so particularly unsavoury that it required an additional coat of paint or not, I do not know. Then here is a thing that I felt myself very much aggrieved about. There was no water-closet there, so at one corner of the house I put a water-closet. The new incumbent wants this water-closet to be put on the other side, he having changed the front of the house. I put up this building and I am charged for altering it, taking up the pipes and pulling down this building which was there. I said to the surveyor, "Let me pull this thing down, it will pay me two or three times over to take away the roofing and take up the tiles." He spoke of it as being formerly a china closet, but there was no closet there at all. When I found it, there was a doorway into a narrow place, and bricked up. Formerly there was no doubt an entrance into the garden, but they found it cold and bricked it up. I had left the door just as it was, and knocked those bricks out. I was charged for that, and I ought to have received money into pocket rather than have been charged in this matter.

*Chairman.*

869. You complain that those things were charged which you think ought not to have been charged, and the grievance is that you have no mode by which you could reasonably appeal?—I could not, because in every case he said, "It will

*Chairman*—continued.

will cost you a great deal more." Then I will tell you of a piece of intelligence displayed by this surveyor. At the very end of my glebe there were two hedges. On a piece of turf belonging to me, between the two hedges, the gipsies used to encamp, and a few months before I left I thought I would stop that kind of thing, and I put two good oak posts and a new gate, which cost me perhaps 4 *l.* I did away with a couple of elm posts and some draw rails which were no longer wanted; and the surveyor insists upon my putting up those rails again, which were not wanted, because they were there before, my new gate and posts having done away with the necessity for them.

870. What is the surveyor's name?—Mr. Wilmot. Then as regards paving at Halford Bridge, we used quarried stones something like mosaic. A local man would have known that that was all right as it should be, but the man from a distance thinks that it is all wrong, and that all this ought to be made square and uniform, and this paving he directs shall be made good. That I object to again with refence to dilapidations, because even with large square stones, if there is a crack in one and you take it up the ground probably will give again and it will break. Then I put up some iron gates instead of wooden ones in the back yard, for which I had to find a lock and key, although there was not one originally. Then there was a case only seven miles from me where the surveyor had made his report upon the whole of the buildings, as the incumbent thought, and one of the buildings which he had never said anything at all about fell down within a week, and I believe Mr. Wilmot was obliged to allow 30 *l.* more. Then the other day I met Sir Colman Rashleigh, and his experience about the Act was this: that although every dilapidation had been settled two years before, and he had paid, I think, 450 *l.* to the satisfaction of the surveyor, yet when his son took the living, and had only held it for a year and a half, they came upon him for 180 *l.* The surveyor said, in extenuation, "things have turned out that I knew nothing at all about."

871. You mean that in that case the five years' clause conferred no relief?—He did not take the five years' clause, he had done everything that was necessary under the old Act, and he just drops in for the new Act, and he had to pay, I think, 180 *l.* additional. I do not think I will trouble the Committee with anything more.

872. I think we gather that your suggestions with regard to amending the Act, are that you would have freedom of choice as to the surveyors to be employed?—Undoubtedly.

873. And some local jurisdiction to determine the party to be appointed as an umpire?—No doubt.

874. And a certificate of the party having expended the money would, in your opinion, be quite as efficacious as paying it into Queen Anne's Bounty?—I think so. If you like, the local magistrates might come and look the thing over; but I am anxious that it should be as much as possible in the hands of laymen.

Mr. *Birley.*

875. I suppose, with regard to spending the money again after having placed it in Queen Anne's Bounty, it is often the case that you employ a number of different tradesmen, joiners, bricklayers, and painters, and so on, and those have to be paid separately?—Yes.

Mr. *Birley*—continued.

876. And, of course, the time when the last completes his work, is the measure of the time in which you can receive payment of the whole from Queen Anne's Bounty?—Yes.

877. You cannot receive a penny from Queen Anne's Bounty until the last payment has been made to the last tradesman, who may be, of course, either accidentally or from carelessness very much delayed; that is so, is it not?—Yes, practically, I think that you can draw a portion, but you have to get the surveyor's certificate, which runs you up again to an additional expense.

Mr. *Gregory.*

878. I do not understand that your objections to the Act carry you to the repeal of it?—I do not see what benefit we get under this new Act.

879. Would you rather fall back upon the old law?—I would rather fall back upon the old law only minimising dilapidations. I think many things are put down now that are a perfect disgrace, such as painting a piggery three times, or taking up a pavement, where for all practical purposes it is good for 50 years; or cleaning out, by the way, a tank in the cellar, as at Halford Bridge, which the surveyor directed me as part of my dilapidations to clean out.

880. How did the old law meet that case?—The old law would have met it in this way: you each had your own surveyor, and if they could agree well and good, and if not they acted in the usual way, and it went, I think, so far as my experience goes, before a referee, whose decision was accepted by them. There were a few cases of litigation, but I believe very few.

881. And you consider that that controlled the amount of the dilapidations more satisfactorily than the present law does?—Yes, I think so.

882. Falling back upon the old law, you would take the chance of such cases as you instanced yourself, where an incumbent dies insolvent, and his widow is made liable for the dilapidations, and has nothing with which to meet them?—Yes.

883. That was the case under the old law, was it not?—It was.

884. That is a case of not unfrequent occurrence, is it not?—I do not know, I am sure. There may be such cases, but I do not think that there are many of them.

885. But you prefer to take the risk of such cases as that occurring, to having the dilapidations kept up from time to time by the incumbent?—Under the old Act, if the officials did their duty, if the thing were going wrong, the rural dean and the churchwardens ought to have reported upon it, and the incumbent ought to have been compelled under the old Act to keep them in tenantable repair.

886. What was the process under the old Act, by which he could be compelled to do so?—Those men, as I understood, took their case to the bishop, and the Bishop's Court had power to sequestrate the living for the purpose of doing what was necessary. I am only speaking so far as my memory serves me, and I have not the Act before me.

887. However, in numerous instances that was not done?—I think it was not, but then that was through official negligence.

Rev. *C. W. Simons.*

27 April 1876.

Mr. *Gregory*—continued.

888. Through the negligence of the rural dean?—Yes.

Mr. *Birley.*

889. It would be scarcely practicable, surely, for a rural dean to go through a parsonage, and ascertain the dilapidations?—I think if you find anything grievously bad, it is talked about and very well known. We discuss one another's houses.

Mr. *Gregory.*

890. It was not in the case of grievously bad dilapidations, but of small dilapidations where the difficulty arose, was it not?—If they were very small, I should think the better thing would be to let the thing alone, and not bring the law into action.

Mr. *Walter.*

891. It was the case under the old law, that an incumbent who had held a living for perhaps 50 years, left it with very heavy dilapidations, and no money to meet them, and it was one of the objects of the new law to provide against those cases, was it not?—No, I think not, because the old law as far as I understand it, met it as much as this law does, because the new law simply directs that the rural dean or any other official can report the case to the bishop, and the bishop can then take action and sequestrate the living; and my impression is that he had the same power under the old Act.

892. Are you under the impression, then, that the new law does not tend to check those things?—I do not think it does at all, and I think that when people know the working of the Act, scarcely anybody will avail themselves of the five years' certificate.

893. You think that abuses of that kind ought to be met in some way?—Yes, in a bad case, but a trifling case I would let go on.

894. Has it ever occurred to you that, by some system in the nature of a per-centage deducted from the annual value of the living, an insurance

Mr. *Walter*—continued.

fund might be created, which would not press upon the incumbent during his tenure of the living, and which would do away with all the hardship created by a heavy bill coming in at the end?—I have thought of that. There would be no suggestion that there would not be some difficulty connected with it, and perhaps some men would not keep up the glebe and buildings in the way they ought. I do not know that that is not a practical suggestion, and I should not object to it personally, though I think there are some difficulties connected with it. Still, there are very few men, perhaps, who would object to a moderate per-centage; and let it be understood that we were morally bound to keep up our buildings as much as we could.

Mr. *Monk.*

895. Do I understand that you received 214 *l.* 12 *s.* 6 *d.* under the Dilapidations Act?—Yes.

896. And having received that sum, do I understand that you did not comply with the 37th section of the Act, by paying that amount to Queen Anne's Bounty?—Yes.

897. Therefore, you are aware that you broke the Act?—I am aware that I broke the Act in the letter, but not in its spirit, *i. e.*, that the money received should be expended on the glebe buildings, which I have done.

898. Consequently, not having complied with the Act, do I understand that you did not apply to the surveyor for a final certificate?—I did not; I probably may do so when I have put in everything in order that I consider to be required.

899. Have the 18 months passed since you have been in your present living?—Yes.

900. Have you received from the bishop's secretary any charges with regard to the dilapidations account?—I cannot find the bill, but I have an impression that I have paid something.

901. Are you aware that the fees which are fixed for the Gloucester diocese are lower in amount than they are in many of the other dioceses?—I am not.

*Monday, 1st May* 1876.

MEMBERS PRESENT:

| | |
|---|---|
| Mr. Birley. | Mr. Gregory. |
| Mr. Cowper-Temple. | Mr. Beresford Hope. |
| Lord George Cavendish. | Mr. Monk. |
| Mr. Forester. | Mr. Wait. |
| Mr. Freshfield. | Mr. Walter. |
| Mr. Goldney. | Sir Sydney Waterlow |

GABRIEL GOLDNEY, Esq., in the Chair.

Mr. James Bull, called in; and Examined.

Mr. *J. Bull.*

1 May 1876.

*Chairman.*

902. You, as my secretary, know that a great number of letters have been received and addressed to me as Chairman of this Committee, and in my individual capacity, with regard to the matter which is referred to the Committee?—I do; letters from every diocese throughout England and Wales, except Bangor and St. David's.

903. You have carefully read those letters through, I believe?—I have read nearly all of them.

904. Will you state generally, for the information of the Committee, what is the effect of their contents?—They all, more or less complain of the working of the Act, and there are many cases of peculiar hardship, especially those of presentation to incumbencies under the old law, and avoidance under the new law. The letters complain generally of the great uncertainty of and inequality in the working of the Act. A great number of them also complain that the incumbents have no voice whatever in the appointment of surveyors. They complain of the excessive and irresponsible power of the surveyors, which is often, they say, very arbitrarily exercised; and they give instances of this. They also complain in some dioceses of the excessive fees of the surveyors and of other charges; and they say that practically they have no appeal from the surveyor's decision. Another complaint is that although dilapidations are rigorously exacted under the new law, the incumbents have no compensation whatever for what may be called unexhausted improvements; many of the incumbents have voluntarily expended large amounts upon the buildings in their benefices, for which they get no return whatever, but they are assessed at large amounts for dilapidations, and they are made liable not merely for the neglect of the former incumbents, but for natural decay; and they are required sometimes to put buildings into a better state than they were in when they were first erected. Merely, as an instance, in one case an incumbent was required to substitute 7 lb. lead for the original 4 lb. lead. Incumbents, on avoiding benefices which probably they have held for only a few years, are called upon to pay

*Chairman*—continued.

money for dilapidations which they think might fairly be spread over a greater number of years, and might be made a charge upon the living, instead of being wholly borne by themselves individually. They complain of having to pay the money to Queen Anne's Bounty office instead of paying it to local men for the repairs being actually executed. They nearly all, I may say, wish that there might be some simpler course of procedure than under the present Act, with regard to the freedom of the choice of the surveyor. Most of the letters complain more or less in some way or other of the present position and powers of the surveyors. A great many letters also wish for a definition of dilapidations; they consider that dilapidations are not sufficiently defined. They wish to have what may be called landlord's and tenant's repairs particularised and distinguished; they think that they ought not to be liable for more than what may be called tenant's repairs; and some suggest, to meet this difficulty, that incumbents should pay annually some small sum into a common fund, and that all that may be called landlord's repairs should be executed out of this common fund, instead of being paid by the individuals. These are notes that I myself have made from the actual reading of the letters.

905. You have before you the actual letters that have been received?—These are the actual letters here which I have read, and as I have read them I have from time to time made notes, classing them under different dioceses.

906. And you have in your hand a list of the letters?—I have.

Mr. *Beresford Hope.*

907. How many letters are there?—Considerably over 100, and they are daily increasing.

*Chairman.*

908. Have you made a classification of the surveyors' fees in the different dioceses from the Papers put in by Mr. Aston?—I have. (*The same was delivered in* (see *Appendix.*) I have gone very carefully through the whole of them.

Mr. *J. Bull.*

1 May 1876.

*Chairman*—continued.

909. The statement which you now put in, is a comparative statement of the surveyors' fees and of the general charges that occur in cases either of inspection by order or vacancy?—That is so. I have set these out particularly in every diocese. There are also certain special fees under special circumstances which I have not included in that abstract, but I have put them in a general note at the foot. These are the ordinary general cases in every diocese. I have gone very carefully through that statement, and put it in various shapes; but I thought that this was the most suitable and comprehensive, and the most easily referred to.

*Chairman*—continued.

Mr. EDWARD HODGES, called in; and Examined.

Mr. *E. Hodges.*

*Chairman.*

910. I THINK you reside in Shropshire?—I am a solicitor at Newport, in Shropshire.

911. Your attention has been directed for some time, I believe, to the Ecclesiastical Dilapidations Acts of 1871 and 1872?—For the last two years it has at times, principally in connection with the smaller livings.

912. There has been considerable discussion, I think, in the diocese of Hereford, and in parts of Shropshire, in reference to the working of the Act?—Yes; I live in the diocese of Lichfield. It has been discussed in the ruridecanal chapter of Edgmond, and a committee was appointed, upon which I sat; and also at the archidiaconal conference at Shrewsbury last November.

913. You have, I dare say, heard various comments, and perhaps some complaint with regard to the working of the Act?—We discussed it a great deal, both the comments and complaints.

914. Will you detail to the Committee some of the complaints that are raised by the clergy with reference to the working of the Act?—As a general rule the complaint is of the inflexible nature of the survey; that a surveyor simply sits down before a house, surveys it, and reports, without any reference whatever to the circumstances of the living to which the house is attached, those circumstances varying very greatly; and neither the bishop nor the surveyor having any discretion whatever to vary the report.

915. Unless an appeal is made against the surveyor's report, it becomes imperative upon the bishop to confirm it at the end of a month, does it not?—The bishop has to make an order upon due consideration, but the Act does not point, in my mind, to that nature of relief which is required by the clergy, because the complaint would not be, as a rule, of the amount of dilapidation, so much as of the incidence of it.

916. Taking the case of an incumbent who was presented and inducted to his living previously to 1871, what was the course of action then?—The course of action would then have been an agreement between an outgoing, or the representatives of a departed, incumbent, and the new incumbent; and they settled it between them.

917. They each chose their own surveyor, or one between them, and determined the amount that one was liable to pay to the other?—I believe that that was the course that was adopted.

918. And then the new incumbent had himself to spend the money that they had agreed upon?—I believe so.

919. There is no provision under this Act by which they are able to recover money for dilapidations with greater certainty or effect than under the old proceedings, is there?—Under this Act the dilapidations are made a debt from the new incumbent, who is forced to resort to the representatives, or to the estate, of the old incumbent; and of course such a position as that would be, in many cases, extremely painful, particularly to a man in the position of a clergyman, because he must squeeze to the uttermost farthing, or pay it himself.

*Chairman*—continued.

920. That is to say, the Act casts upon him the obligation of paying the money that the surveyor assesses, and leaves him to recover it by law?—It makes it a debt from him, and gives him the power of recovering against the estate of a departing or departed incumbent.

921. Do you know from your own experience any action that has been taken by Queen Anne's Bounty with regard to lending money upon small livings?—I had occasion to make the inquiry, and I was answered by Mr. Aston that they did not lend on livings under 170 *l.* (I think he put that figure), because they have to take account of the Stipendiary Curates Act, and they must leave sufficient margin for that; so that, practically, small livings were unable to borrow at all.

922. In your opinion, does the Act, practically, press more hardly upon small livings than upon livings of greater value?—Unquestionably; because I suppose there has been less money to lay out in past times upon repairs; the houses are more likely to be in an indifferent condition and to require repair, and there is, of course, less money from the income to pay for them.

923. Do you know that, practically, surveyors require the houses now to be put into the condition that they were originally in?—Not of my own knowledge, but I have heard so. The complaint has been made that they require, on a strict survey, everything to be restored and made perfectly good.

924. Will you state to the Committee what your ideas are with regard to vicarages in their original institution, and the former repairs of the buildings?—Of course, vicars were originally placed in small cures by the religious houses, the patrons of the livings, and they had small stipends assigned to them for doing the duties, the repairs of the buildings being borne by the great tithes which were received by the religious houses; but when those great tithes were alienated in so many cases in Henry the Eighth's time, on the dissolution of the religious houses, the vicars were left in a very hard case, because they had still the burden of repairs thrown upon them, but the means of bearing the burden were taken away, their patrons being lost to them entirely.

925. In some cases vicarage houses and vicarage buildings are very large in proportion to the income that is derived from the vicarage, are they not?—Yes. I can speak of one case, that of Childs Ercall, in Shropshire, two parishes off from

*Chairman*—continued.

from where I live, where the house and grounds are such as a man of 2,000 *l.* or 3,000 *l.* a year would live in, and the income of the living is between 70 *l.* and 80 *l.* a year.

926. And under this Act an incumbent is liable, is he not, to meet all the repairs, either from decay, from lapse of time, or otherwise, in respect of those buildings?—Entirely; there is no relief of any kind; whatever the repairs are the Act throws upon him.

927. The old law cast no obligation upon the new incumbent, did it? — No; the outgoing incumbent was liable for the dilapidations.

928. Supposing that an incumbent accepted a vicarage now, he would be liable under the Act to pay all the amount of repairs that the surveyor thought the edifices required, would he not?—I understand this Act to make no alteration whatever in the law itself.

929. Except as regards the obligation upon the new incumbent?—It puts him in a different position, but no more than that.

930. It puts him in rather an unpleasant position, does it not?—Very unpleasant.

931. Whether he can recover the amount or not, he is the person who is made in the first instance responsible for the dilapidations, is he not?—Yes; but what I meant to say was this: that the outgoing incumbent, or the estate of the departed incumbent, is ultimately liable for dilapidations and always has been, only the means of getting at them are varied by this Act.

932. Has your attention been at all directed to the latter clauses of the Act with reference to ecclesiastical property out on lease?—No, I have not had any occasion to consider that point.

933. You have no cases of rectorial manors in your neighbourhood?—There is one near us at Gnosall in Staffordshire, but I know nothing about it.

934. You say that there is no alteration of the law; under the old law, if a clergyman objected to the amount, he would appeal to a common law court, would he not?—Yes; but I meant that the ultimate sum, settled somehow or other for repairs, has to be borne by the outgoing incumbent or his estate.

935. But the law has altered the mode of fixing the amount?—It has altered the means of getting at the amount.

936. That is to say, it has given the bishop the jurisdiction instead of the temporal courts?—Yes.

937. Will you state to the Committee what the wishes of the clergy are, as far as you know, in your district, with regard to the mode in which this question of dilapidations should be dealt with?—As to the dilapidations themselves, I think that they would all be satisfied with a classification into substantial repairs and tenantable repairs, they themselves doing and paying their share of the tenantable repairs, and being allowed to borrow on the substance of the living for the substantial repairs in the ordinary form of borrowing from Queen Anne's Bounty.

938. And that would satisfy them, both as regards what had occurred in their own time, and what they had become liable to for their predecessors?—I think that that would ease the burden to them and would satisfy them as far as I know; but the difficulty, of course, comes in with regard to the small livings which cannot borrow.

*Chairman*—continued.

939. What would you say with regard to the small livings having the power to borrow?—I could only make a suggestion, which would, of course, be submitted to the powers of Queen Anne's Bounty, which would be this: that they should be empowered to lend notwithstanding the Stipendiary Curates Act. The risk, I apprehend, of the operation of that Act must be very small, and I would suggest that they should be allowed to run that risk and be indemnified in case of loss.

940. That is to say that the Governors should be indemnified against any loss falling upon them from the living not being sufficient to repay the amount?—Yes, in case of the operation of the Stipendiary Curates Act coming in.

941. And that you think the clergy would be generally anxious for?—The incumbents of small livings, unless they have considerable means of their own, are simply powerless to do repairs. You would take everything that the living affords to do the repairs, and leave nothing whatever to pay them for their performance of the duties.

942. From your general knowledge of your district, do you think that that would be a more acceptable augmentation than even an addition of a small amount to the income of the living by the Governors of Queen Anne's Bounty?—I believe it would. At the same time I do not think that it should exclude any addition to the endowment that Queen Anne's Bounty thought proper to make.

943. With reference to the mode of ascertaining the amount of dilapidations, what would you suggest instead of the existing process of appointing only one surveyor, or two surveyors, in a diocese?—The process in the Act, as regards the appointment of surveyor, is defective in this way, that the appointment being once made, and required to be made within three months, the bishop, archdeacons, and rural deans have no power whatever of making any further appointment. They were to appoint one or more surveyors. If they had had time to repair the oversight of appointing only one for each archdeaconry, which I believe has been generally done, the evil of that might have been avoided, and they might have multiplied them at the request of the clergy.

944. Your reading, and the generally accepted reading, of the 8th Section is that, having exercised the power of appointing within three months a surveyor, or surveyors, that power is practically exhausted until the man appointed is removed?—It is exhausted.

945. Supposing that an alteration were made in the Act, how would you suggest a mode of ascertaining the amount of dilapidations as between an out-going and an in-coming incumbent?—I think that the appointment of one surveyor for each archdeaconry is a most expensive mode of ascertaining it, because a man very often has to go 30 or 40 miles to make a survey, it may be, of a small amount, when every market town affords two or three or more surveyors, who are perfectly capable of doing the work; and if each ruridecanal chapter had the power of nominating and submitting to the bishop for appointment as many surveyors as they found necessary, I think that the clergy would be satisfied, and then they would get all the work of surveying done at the ordinary market price, without having to pay

Mr. *E. Hodges.*

1 May 1876.

*Chairman*—continued.

expensively for loss of time and travelling expenses.

946. Could you by that means get rid of the fees to the bishop's secretary and to the registrar?—I do not think that you could do that, but I have not gone into the question of those fees so much; they must be paid somehow or other.

947. But a fee upon the ultimate conclusion of the business?—No doubt some record might be kept of what has been done, and that might be paid for in the same way. Those fees may or may not be open to revision.

948. There was nothing of that sort before, was there?—No, I think not.

949. That is a novelty since 1871?—I think it is.

950. Do you go further than that; do you think that the parochial clergy might choose any man they liked if he were approved by some competent jurisdiction?—Yes; I think there are probably more ways than one of doing it. The way which recommended itself to me was the appointment by the ruridecanal chapter, whose local knowledge would enable them to select fit men, and the names being submitted to the bishop, he would be able to reject any man who was improper, or they might alter their lists from time to time if they found that they had appointed an improper person or an unfit man.

951. And from that list you would give a free choice to the clergy?—I would let the clergy call in any one or more registered surveyors. In case of difference, you might have, further, instead of an appeal to another surveyor, or an appeal to a barrister (because I never could understand what the meaning of an appeal to a barrister under the Act was), the appointment of an inexpensive Commission, such as two clergymen with the archdeacon or a justice of the peace, to settle between the two parties. It is probable that in making a distinction between substantial and tenantable repairs, there would be a border-land of doubt whether particular repairs were on one side of the line or the other; that would depend very much upon the circumstances of tenure, the number of years that the incumbent had been in the living, and so on. Such questions as those I think might fitly be left to an inexpensive Commission of the kind which I have mentioned.

952. To some parties in the locality?—To some of the neighbours. There would then be every inducement to act fairly, because every man upon it might, at some time or other, be in the like case himself.

953. I suppose that in your professional position you have frequently had cases of ordinary dilapidations between out-going and in-coming tenants, apart from the clergy?—Very few; I think because, as a general rule, surveyors settle these things.

954. But you know that as between the out-going and in-coming tenant there are, in almost all cases, some amounts to be settled?—Almost invariably.

955. That is generally done by the surveyors amongst themselves, or by parties agreed upon, is it not?—I do not think that they ever come to the lawyers, or very rarely; or if they did come to the lawyers, the lawyers would send them back to the surveyors, because it is purely a surveyor's question.

956. So that, if the clergy were left to settle

*Chairman*—continued.

the question among their own people, you think that they would settle it reasonably satisfactorily?—I can see no difficulty about it.

957. With reference to the payment of the money to Queen Anne's Bounty, do you think that in small amounts, at all events, the clergy might be trusted to spend it themselves, and obtain afterwards a certificate that they had done so from this same commission, or from the rural dean?—I should think so. At the same time, if a banker is necessary, I suppose that Queen Anne is as good a banker as anybody else; but I should think that they might be entrusted with small sums, at all events.

958. You know sufficient of the Act to be aware that they cannot get the money out of Queen Anne's Bounty except under a certificate from the surveyor?—Yes, that is so.

959. Supposing that they selected their own surveyor, or one of the surveyors who had been approved by this local jurisdiction, do you think that a certificate from him, backed by the rural dean or the chairman of the petty sessions, would be sufficient for the registrar of the diocese?—I should think it would be quite enough.

960. Without the process of the money coming up here and going back again?—Yes; and I think there is another reason against the money being paid first before the repairs are done, which is this: that the surveyor to be safe must have a margin of excess. If he fixes too small a sum, someone must lose by it, and therefore he takes care to be on the safe side, and he would put an extreme sum in order to cover possibilities.

961. Have you read the 45th section of the Act, with regard to the surveyor's doing the work?—I have.

962. Under the 42nd section of the Act, in case of a vacancy the repairs are to be executed by the new incumbent within 18 months; supposing that he does not choose to execute them, is there any other provision that you know of under the Act, except the 45th section?—I know of no other.

963. Under the 45th Section, the repairs are to be done by the surveyor, are they not?—"The builder or contractor executing such works shall be paid for the same as the works proceed, and the surveyor shall from time to time certify." That would be the ordinary way in which things are done.

964. Under this Section, supposing that the incumbent, in case of a vacancy, does not do the repairs, then the surveyor who has made this report is to direct the work to be executed, and is to employ builders and contractors for it; but at the end of the Section it says: "Neither the governors, the bishop, nor the patron, shall incur any liability." I am putting that Section in illustration of what you said, that the surveyor would be bound to keep a large margin in the event of things being thrown upon himself to do?—Yes; he must, as a man of business, be upon what he would consider the right side.

965. Having an obligation cast upon him to do repairs, if the incumbent will not accept his report, he would naturally leave a large amount as a margin, so as to be able to carry them out himself?—He would leave sufficient, no doubt, for the possibility that he may himself be called upon to do them for that money.

966. Then your opinion, I gather, is that if the clergy had a freer selection in the appointment of

*Chairman*—continued.

of the surveyors, and a little more management amongst themselves, that would be the mode in which they would like the Act to be amended?—I think that that would be most agreeable to them.

Mr. *Beresford Hope.*

967. With reference to the question of insurance for dilapidations, have you ever considered whether anything like a general insurance could be made by means of Queen Anne's Bounty Board, or any other body?—I think that it would be impossible for many reasons. Insurance means some of us paying for others. In life insurance, those who live long pay for those who die soon, and we accept the condition with pleasure. The same as regards fire; if our house is not burnt down, we pay for those whose houses are burnt down, and we are glad to escape. But with reference to repairs, that element of uncertainty which is of the essence of insurance is wanting. A man who has a good house, which may last 50 years without anything being laid out upon it, would, under such a system as that proposed, I think, have to pay for those whose houses are tumbling down. Those whose houses are in want of repair would, of course, vote for such a thing; but, those whose houses are good and substantial would vote against it.

968. The smallness of the tax, in short, would not reconcile the people to its theoretic unfairness?—I should think not, because it is a certainty. A surveyor can say that a house will last for so many years before repairs are wanted; but we cannot tell when we are going to die, or when our houses will be burnt down.

969. Do you think it an advantage that the bishop is brought in so immediately, or would things be made more cheap and quick if a lesser dignitary, like the archdeacon or the rural dean, were brought in in the first instance?—I think that the appointment of the archdeacon would be satisfactory; in some cases I think that there would be a jealousy of the rural dean.

970. On the whole you think that the archdeacon is neither too great nor too familiar?—I think that he would be the proper person, because he would have more time and a smaller area of observation.

971. I gather from the whole tenor of your evidence that you think that the shoe pinches very much, in the way of their being no sufficient appeal from the first report of the surveyor?—Yes; I look upon the appeal from one surveyor to another surveyor as little more than no appeal at all; because two competent surveyors in all probability would not differ more than a shade upon any question of dilapidations.

972. Then your idea is that the body to which you should appeal, should be this commission of neighbours, and that they might take evidence, if they pleased, in the person of another surveyor?—Of course they should get what help they could; but I look upon the appeal, in the present circumstances, as insufficient, because there is no power of allotting the amount of dilapidations to the body of the benefice, or to the incumbent's own pockets.

973. In fact it is too rigid all through?—It is an inflexible rule which works great injustice.

974. And it works all the greater injustice from the small number of surveyors, and the distance they have to be called in?—That of course



Mr. *Beresford Hope*—continued.

makes it a more expensive mode of getting a surveyor than if you called in one who lived next door.

975. On the whole, would you remedy the grievances that seem to exist, by an amending Act, or by simply repealing the present Act, and passing a new Act?—I could hardly answer that question until one came to settle the whole framework of an Act.

976. But from your legal experience do you think that the present Act would require considerable amending?—I think it would; as a matter of choice, one prefers a new Act altogether to an Act with several amending Acts. It is much less trouble to work out in practice.

Mr. *Birley.*

977. I understood you to say that the grievance was not so much the amount of dilapidations as the incidence of them?—Yes.

978. And you proposed, I think, speaking on behalf of the clergy at the ruridecanal meeting, that the tenants' repairs should be charged upon the outgoing incumbent, and that the landlord's repairs should be paid by borrowing money from Queen Anne's Bounty?—Yes, at the option of the incumbent.

979. Then, of course, the landlord's repairs would fall, not upon the outgoing incumbent, but upon the new incumbent?—I said that there would be a border-land of doubt, in some cases, as to the apportionment of those repairs; and it is for that, I think, that the commission which I have mentioned, or some independent body, should be called in.

980. But whatever the commission determined, if you borrowed money from Queen Anne's Bounty, that would be at the expense of the future income of the vicarage, and not of the previous incumbent, would it not?—It would.

981. Do you agree that it would not be unreasonable to throw the landlord's repairs upon the future incumbent rather than upon the past incumbent?—No doubt that would be so.

*Chairman.*

982. I gathered that you would make the living itself practically the landlord, doing the substantial repairs, and that the outgoing incumbent, as the occupying tenant, should do all ordinary tenant's repairs?—Yes.

Mr. *Birley.*

983. Are you aware of the practice in the North of England of tenants paying for tenant's repairs, and of landlords paying for landlord's repairs?—I am not. As a rule, so much is taken upon the landlord in Shropshire, that the tenant, I think, has not to pay any substantial repairs at all.

984. The landlord, practically, pays the repairs, does he?—He does.

985. In Lancashire the tenant pays tenant's repairs, and the landlord pays what are considered landlord's repairs; and there is, I presume, no great difficulty in separating the two?—I should think not; but I have heard surveyors say that it is difficult.

986. Many witnesses have told us that they thought that there was a practical difficulty; but I do not think we find it so when it is fairly understood?—It would be there, I think, that a commission such as I have mentioned might be

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Mr. *Birley*—continued.

called in with advantage. There would be always a border-land of doubt as to which side the repairs should be thrown upon. There might be some substantial repairs thrown upon the outgoing incumbent, supposing that he had been a long time in possession, and had committed wilful waste.

987. As regards the small livings under 170 *l.* per annum, I understood that you proposed to give to those small livings the power of borrowing from Queen Anne's Bounty Board, and to exempt the Governors of the Board from any responsibility in case the money is not repaid; is that so?—Yes; to give the Governors the power of lending, notwithstanding the risk of the operation of the Stipendiary Curates Act, and that risk, I suppose, being small, indemnifying them in the case of loss thereby.

988. Have they been deprived by statute of the power of lending, or is it a regulation of the office?—I believe it is a regulation of the office; but Mr. Aston, no doubt, would answer that.

Mr. *Cowper-Temple.*

989. Looking at the analogy to be drawn from other property, do you think that it would be fair to shift the charge for substantial repairs or landlord's repairs from the incumbent to any other quarter?—There are but the living and his own pocket.

990. It does not occur to you that the patron should bear it?—The patron would object, I have no doubt.

991. When it becomes necessary to build a parsonage house, I suppose the charge falls upon the future incumbents who will occupy it?—Of course, if they borrowed money to build it. It would do so, because it would be repayable by instalments as long as the loan exists.

992. You suggested, did you not, that the charge for substantial repairs would be spread over future incumbents of the living?—If they entered before the loan was repaid, no doubt a part of it would be; but then they would at the same time derive a benefit from the outlay. A novelty in this Act is giving an incumbent the power of borrowing at once and being indemnified against future repairs for a certain time. If an incumbent were to call in the aid of the Act in that way, and if he were to die before the loan were repaid, the unpaid portion of the loan would, of course, fall upon the in-coming incumbent, but, at the same time, he would receive a portion of the benefit.

993. In cases where the outgoing incumbent is chargeable for repairs, and has also spent money of his own in improving the house or the glebe, is he entitled to any credit for the money that he has expended in that improvement?—None whatever, I think.

994. Is it not fair that that should be taken as a set off?—Not as a matter of course, I think, because he does it of his own free will, and, of course, without the consent of his successor, because he does not know who he will be, and there might be cases of great injustice. A man with a large family might build a large house, and might be succeeded by a man without any family at all, and it would be a hardship to impose the repair of a large house and buildings upon a man who had only himself to consider.

995. Whereas, if he had spent his money simply upon maintaining the property, he would

Mr. *Cowper-Temple*—continued.

thereby be diminishing the charge which could be put upon for dilapidations?—Yes.

Mr. *Walter.*

996. The legal status of an incumbent of a living with regard to his parsonage is different altogether, is it not, from that of any other tenant?—It is; it is what we should call a qualified fee simple.

997. But in the case of any other qualified fee simple, would the tenant be under any similar obligations to his successor?—There is a difference in this respect: that in this case there are duties attached to the occupation of the house; it is not a purely beneficial occupation, but it is an occupation; and the occupation of the house is merely as it were appendant to the performance of the duties. The performance of the duties is the first thing, and the occupation of the house is a mere accession.

998. Does the law take cognisance of the fact that there are duties; and is it that circumstance which, in your opinion, attaches to the incumbent for the time being different obligations with regard to the maintenance of the buildings and keeping them in repair from those which attach to any other tenant of a similar qualified title?—I believe that the law imposes the whole of the repairs upon him.

999. At all events, as a matter of fact, he holds the living subject to the obligation to keep the buildings in repair?—The law obliges him to do so.

1000. And that has been the case for some centuries?—Yes.

1001. What is the exact position of the Governors of Queen Anne's Bounty under the recent legislation with respect to the incumbents of livings; are they merely bankers, or are they trustees, or what position do they occupy?—I think I would rather that you would ask that question of the secretary. I could give no satisfactory evidence about that.

1002. Supposing that there is no way of shifting an obligation from one shoulder to another, what, in your opinion, is the best way of rendering it as little burdensome as possible, and as secure as possible; is it better that, as under the present system, an incumbent who holds his living for a great number of years should be enabled to permit a long accumulation of dilapidations, that is to say, to allow a debt for dilapidations to accrue, which may or may not be defrayed by his executors when he dies, and may ultimately have to be borne by his successor, or would you not think it better that he should be compelled to put by a certain portion of his income, I will not call it an insurance, but something analogous to the case of civil servants in the East India service, or any other civil servants who have to pay a certain per-centage out of their incomes in order to meet the case of their own dilapidations when they become superannuated?—I almost think that it would be an interference with the rights of a class of men that would hardly be justifiable.

1003. Which class of men?—The clergy.

1004. But there are different classes who have different rights, are there not; the incumbent has the right of holding the living, but his successor, whoever he may be, has also the right to receive dilapidations?—That would, of course, make a man pay for a house which was perfectly good;

Mr. *Walter*—continued.

good; it would even make him pay for a house that he had himself built; or he might prefer to have the benefit of a house kept in perfect repair, and yet you would make him both lay aside a sum and also keep the house in repair.

1005. Can you suggest any other mode of payment which should insure the next incumbent from the danger of having to pay to Queen Anne's Bounty, dilapidations which he cannot recover from his predecessor's executors, because the previous incumbent may have died insolvent?—I do not know that I can. The whole difficulty is created by these very small livings, of which there are so many in every diocese, where there really is not enough to pay even for the duties that are performed, let alone providing besides for an accumulating fund for possible dilapidations.

1006. Are you acquainted with any cases in which livings have been repeatedly refused in consequence of the dilapidations?—No; probably the Act has been hardly long enough in operation to make it general.

1007. Then you can suggest no means by which an in-coming incumbent (looking upon him as a tenant-entail, if you please, or in any other capacity), can be secured against having to pay for the dilapidations of his predecessor, owing to his predecessor having died insolvent?—No, I really cannot.

1008. Is not that one of the grievances for which it is the object of this Committee to try and find a solution?—I hope they may find a solution, but I confess that it is not apparent to me.

Mr. *Monk*.

1009. Do you know whether the clergy in the diocese of Lichfield object to the mode in which the surveyors are appointed by the rural deans and archdeacons?—I have heard some complaints, but I do not think that they are very serious.

1010. There are objections, are there not, as to the scale of fees for the payment of the surveyors, and also of the diocesan officers?—There were loud complaints of the amount, but I believe that since I heard those complaints the fees have been reduced. I have heard it so stated by authority.

1011. I think that one of the objections is that the amount is paid into Queen Anne's Bounty?—I have not heard complaints simply of the payment alone, but that it is paid first and the repairs have to be done afterwards, and that they may or may not correspond in amount.

1012. Have you heard suggestions whether the money ought to be allowed to remain idle in the

Mr. *Monk*—continued.

hands of the Governors, or whether the interest on the money should be paid to the incumbents who pay it in?—The Act orders the money to be invested. I do not know what the practice of Queen Anne's Bounty is with regard to the interest on it.

*Chairman*.

1013. Where ordinary tenants for life borrow money under the various Acts that are now in existence for repairing buildings, or building cottages or houses, do you happen to know whether 25 years is the general period?—I remember making the inquiry once, but I really forget whether it is 25 or 30 years. Under the Public Works Commission I think they lend in 25 instalments. I had occasion to borrow once under the Public Works Loans Act, and I think it was 25 to 30 years.

1014. You know that there are a variety of Acts under which tenants for life can borrow money, spreading it over the estate for a long series of years varying from 25 to 33?—Yes.

1015. And that plan you would think advisable with regard to the incumbents of livings?—I think so.

1016. Do you think that the period of five years, which the Governors of Queen Anne's Bounty require, is too long or too short a time?—It is very short, but it may depend upon the circumstances. One man might very easily repay in five years what another man might like to have 25 or 30 years to repay.

1017. Then there should be a larger discretion in Queen Anne's Bounty Board if they adopted a greater extent of loans in that way?—I think so.

Mr. *Birley*.

1018. Has it ever occurred to you whether a system of inspection by a diocesan surveyor might be advantageously introduced, every parsonage house in the diocese being inspected once every 14 years, for instance, and then notice being given either for tenant's repairs to be done by the then occupier, or landlord's repairs being done by borrowing money from the Bounty Board, so as to keep the parsonage houses in better condition than they have been in hitherto?—I think that perhaps that might be done with advantage; but I think that the clergy feel that the power of inspection given by this Act is disagreeable.

1019. But this only applies in the case of the avoidance of the living?—I think that it gives a general power of inspection at the request of the patron, or of the archbishop, or of the rural dean, and therefore they are subject to the intrusion at any time.

Mr. *E. Hodges*.

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The Reverend JAMES RUSTON, called in; and Examined.

*Chairman*.

1020. You are, I believe, at present residing at Hurst Castle?—Yes; I am acting chaplain to the garrison at Hurst.

1021. And you were formerly, I think, incumbent of Hordle, in Hants?—I was, but I am not now incumbent; I resigned under the Benefices Resignation Act.

1022. In what diocese is Hordle?—In the diocese Winchester.

*Chairman*—continued.

1023. You were instituted, I think, previously to the operation of this Act?—Yes.

1024. When did you leave Hordle?—I resigned the benefice last year.

1025. On your being made garrison chaplain?—No; I held the chaplaincy with the benefice. I resigned the benefice, finding that I was unequal to the performance of the joint duties.

1026. Will you shortly detail to the Committee,

Rev. *J. Ruston*.

Rev. *J. Ruston.*

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*Chairman*—continued.

mittee, if you please, the circumstances in which you think that you have suffered grievance by this Act?—The rural dean of the diocese came to me on one occasion, and after a few moments' conversation, without saying much to me, he said that he thought the buildings of the benefice were out of repair. The buildings of the benefice had not in any way been inspected by him. The conversation between us did not take five minutes, and I had previously gone to considerable expense in putting right anything that the buildings had suffered from by weather, and so forth.

1027. Will you tell the Committee what was the value of the living?—The net value of the living is about 120 *l.*

1028. Was there a vicarage house?—Yes, there was a vicarage house put up during the time of my incumbency; it was quite a new house.

Mr. *Monk.*

1029. How many years ago was the parsonage house built?—In 1862 or 1863.

*Chairman.*

1030. While you were incumbent?—Yes.

1031. When were you instituted?—I was instituted in 1861, but there was no house then upon the benefice at all.

1032. Then on your being instituted, an arrangement was made by which a house was built?—Yes.

1033. Did the Governors of Queen Anne's Bounty advance any money towards that?—It was a joint chapelry with Milford, and, on the separation of Hordle from the parish of Milford, the Ecclesiastical Commissioners gave a sum equal to seven years' value of the benefice.

1034. That was 700 *l.*?—Yes, and then there were subscriptions raised, and I made up the remainder.

1035. Part was supplied by a grant from the Ecclesiastical Commissioners on the separation of the living, part by subscription, and you made up the remainder?—Yes, through my friends, and so forth.

1036. Was there any approval of the plans by the Ecclesiastical Commissioners?—The plans were drawn out first by the diocesan architect, and they were approved by Mr. Christain, the surveyor to the Ecclesiastical Commissioners.

1037. Under whose direction was the building erected?—Under the direction of Mr. Coultson, and the payment by the Ecclesiastical Commissioners was dependant upon Mr. Christian's final report.

1038. After the building was completed did Mr. Christian make a report?—Yes, that the buildings were quite in a perfect state.

1039. Then you held this incumbency from 1861?—Yes.

1040. When did you get into the house?—The house was not tenanted till 1864.

1041. Now then we get to the point when the rural dean came to you and said that he thought your house was out of order?—Yes, that was in 1874.

1042. That was 10 years after you got into it?—Yes; the house had been but very little occupied indeed.

1043. What happened after that?—The report was made to the bishop.

1044. Have you the report with you?—I have not the rural dean's report with me; I have the last report that was made.

*Chairman*—continued.

1045. Have you got the surveyor's report?—Yes, I have one of the surveyor's reports; the last report; I have not with me the first report.

1046. What was the total cost of the building, in 1864?—About 1,200 *l.* Then I put up outbuildings additional afterwards at my own expense.

1047. At what do you estimate the total cost of the buildings?—I should think 1,400 *l.*, with the outbuildings and all.

1048. Then, after the rural dean had been to you, in 1874, the bishop served you with some notice, I suppose?—Yes; I wrote to the bishop, asking him, as I was in a bad state of health, whether he would kindly defer the inspection by the surveyor for a little time, and that I did not consider the buildings were in a dilapidated or bad condition at all. The house was not what I considered in a radically bad condition, although it might want a few repairs.

1049. What was his reply to that?—His reply was that the matter had better take its course. The surveyor then came down, and inspected the buildings of the benefice. I entered my protest against his inspecting, and against my being liable for the repairs to the outbuildings, as they were built by myself, and had never been made over to the benefice. Of course, the outbuildings had got a little dilapidated; there was a glebe, and they were let to a tenant.

1050. They formed no part of the plans approved by the Ecclesiastical Commissioners, and upon which their grant was made?—None whatever.

1051. They were buildings put up after that was done, for your own personal convenience?—Quite so, and for the benefit of the benefice.

1052. Have you the report that the surveyor made in the first instance?—I have not the report that he made in the first instance; but I have the last report after the accession of a new incumbent.

1053. Then, as I understand, a report was made by the surveyor under the first portion of the Act?—Yes, on the complaint of the rural dean.

1054. And that you did not comply with?—I was willing to comply with it.

1055. What was the amount?—£. 161 under the report of the surveyor.

1056. And that 161 *l.* would have had, under the provisions of the Act, to have been paid by you, supposing you had complied with it, to Queen Anne's Bounty?—If I had complied with it; but I was informed that it was the intention of the bishop, if I did not at once put the buildings in repair, to sequestrate the living; and of course, in that case, I had nothing to take but the profits of the living for the repairs of the benefice, leaving me virtually without any income at all. On a living of 120 *l.* it would have left me with nothing to live upon out of revenues of the benefice.

1057. That, you say, was about the year 1874?—It was in the early part of 1875; it was in 1874 that the rural dean made his complaint.

1058. You asked for time, you say, to do these repairs by degrees?—Yes, I asked for time; I had done a great deal of repairing previously; I had spent between 30 *l.* and 40 *l.* in external painting

*Chairman*—continued.

painting and such work; and inside the house I had done all that I could; the house happened to stand exposed, and some portion of the tiles had blown off, and I bedded them in cement and put everything to-rights at my own expense; but that did not come, of course, under the Act; that was all private.

1059. When you asked for time in the first instance, what was the reply?—The bishop wrote to me through his secretary that the matter had better take its course, and then the surveyor, in his report, gave me another nine months for completion; I happened unfortunately to be extremely ill at the time, and I was advised to avail myself of the provisions of the Benefices Resignation Act; I went and consulted with my diocesan, and without giving me any pledge with reference to dilapidations, he said that he thought there would be no difficulty; but still there has been considerable difficulty.

1060. In the end, I understand that you resigned the living?—I resigned the living under the Benefices Disabled Incumbents Act; I resigned a portion of my charge.

1061. Will you explain to the Committee what you mean by saying that you resigned a portion of the charge?—I was chaplain to the garrison at Hurst as well as vicar of Hordle.

Mr. *Beresford Hope.*

1062. They were two distinct appointments?—They were two distinct appointments.

*Chairman.*

1063. When you resigned the living, which is the matter with which we are dealing, what happened?—When I resigned the living I believe that a fresh inspection was made by the surveyor, and that is the report on the fresh inspection.

1064. Was it by the same surveyor?—It was by the same surveyor.

1065. What is the surveyor's name?—Mr. Rowland Barker; he is the diocesan surveyor.

1066. The amount here is 171 *l.*, I see?—Yes; in the eight months the dilapidations had slightly increased.

1067. I see that a very large portion of the things that are set out in the report are respecting outbuildings?—Some of the outbuildings have since been pulled down; the outbuildings as to which I am expected to find some means of liquidating the repairs, have been pulled down by the new incumbent; I believe there is a power given under the Act for that; they were not unnecessary, because there was glebe land attached, and those were the buildings of the glebe, cart sheds, and so forth.

1068. What happened after this order was made upon you in 1875 with reference to this money?—After the induction of the new incumbent, whose name is Little, I received a notice from his solicitor to say that all payments that might be due to me at the time must go to him; so that at the time of my resignation the payments from the benefice went into his pocket, when I had every reason to imagine that I should get my stipend of the benefice to the time of my resignation, and that he would be empowered to borrow the money for his dilapidations from the Governors of Queen Anne's Bounty. I am entitled to a small pension of 30 *l.* a-year, which the Commissioners awarded me. There was a Commission appointed under the Benefices Act



*Chairman*—continued.

in the usual form, and they agreed to award me 30 *l.* a-year. They questioned me upon the subject of the dilapidations, and I said that it was not in my power either to pay the money myself, or to raise it amongst my friends. Therefore, they slightly reduced the pension of the benefice; but I have not received the pension, and whether or not the incumbent has any power to stop the payment of the pension on account of the dilapidations, I am at present unable to say.

1069. Practically, you have not paid the 171 *l.*, and you have not received the pension?—No, I have not received the income to the time of my resignation.

Mr. *Beresford Hope.*

1070. When did you resign?—My resignation was dated last September.

*Chairman.*

1071. Did you receive the income from the benefice up to September?—No, I did not. I received the rent of the glebe lands up to March. I received the tithe up to July. The rent not being due till Michaelmas, and my resignation taking effect from the 7th of September, of course the rents of the glebes, and so forth, would be paid to the new incumbent, and his solicitor claimed them, and the pension has not been paid me; but still I hope it will be.

1072. Have any proceedings been taken against you in reference to it?—There has been a great deal of correspondence between the solicitors; I cannot say that I have had any actual writ, but the solicitors have not settled the matter, I believe, yet. It is still going on; it is still held over me *in terrorem.*

1073. How much do you think out of your own pocket you spent on this living while you had it during those 10 years, including what you subscribed to the house and the outbuildings?—I should think quite 200 *l.*

1074. Do you think that it would have been better if you had had some surveyor on your own part to have gone into these questions?—Yes; I think that if the complaint had been made in another form it would have been better.

1075. You think that the charge for dilapidations is excessive?—Yes, I think that it is excessive with regard to the value of the benefice, and with regard to what has actually been done subsequently. I have no practical power of appointing a surveyor under the Act. There is by the 16th clause of the Act a provision that the expense of appointing a second surveyor is to be defrayed by the party objecting, and I could not see the utility of availing myself of it. Indeed, I was too unwell to do so at that time; and in fact I did not expect to live.

1076. Have you any suggestions to make to the Committee with regard to the amendment of the Act?—With regard to the 12th section I should give the incumbent a little power by adding the names of the churchwardens, who are sufficiently well acquainted with the temporal matters of the benefice to know whether a building is radically out of repair. If the churchwardens were joined in with the incumbent, and they made a report to the rural dean, I think that that would be an improvement.

1077. The paper which you have handed to me is a list of the repairs?—Yes.

 1078. That

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*Chairman*—continued.

1078. That is 10 *l.* increase on what it was before?—Yes.

1079. Are the Committee to understand that, practically, receiving the order to do this amount of repairs and these specific things drove you out of your living?—Yes, it drove me to resign the living. I acted by the advice of the bishop as well.

1080. But still, acting by the advice of the bishop, your resignation of the benefice has, nevertheless, not relieved you from the obligation?—I am advised that it has not relieved me from the operation of the Act.

Mr. *Beresford Hope.*

1081. Is your complaint against the rural dean and the authorities for coming down upon you to make repairs too soon after you had built the house, or against the character and the extent of the repairs which were brought up against you?—My complaint is that the house was not dilapidated to that extent.

1082. You admit that there were repairs necessary?—Yes.

1083. And that it was right that the authorities should look over the house?—Yes, and that there should be some repairs done; but I think that the operation of the Act might have been made to press less hardly.

1084. In short, you think that a heavy bill was run up hardly against you?—Yes. The surveyor, I have no doubt, did his duty, but still it was a very heavy bill.

Mr. *Cowper-Temple.*

1085. Do you consider that the surveyor, in the fulfilment of his duty, was anxious that the buildings, both the house and premises, should be put into exactly the same condition of excellence that they were in when they were originally built?—Yes, I do.

1086. Do you think that he took an exaggerated view of what his duty was?—No, I cannot think that he did, but I felt that the Act pressed very hardly upon me.

1087. You did not complain of any particular item in his report?—I was too unwell to go into the details with him at the time.

1088. Have you anything further to suggest to the Committee?—I should suggest that with regard to the 12th section, it might remove a cause of complaint if the churchwardens were assisted by a surveyor to be named by themselves and the incumbent jointly. That might tend greatly to relieve the incumbent of the burden. And with regard to Queen Anne's Bounty, I would suggest that it should not be optional for them to lend, because the Governors of Queen Anne's Bounty, it seems, say that under the Act there is no power for them to lend.

Mr. *Monk.*

1089. I think I understood you to say that you asked the bishop for further time when the complaint was first made by the rural dean?—Yes, I asked him to defer the matter for the present.

1090. Has the bishop, under the Act, the power of deferring the matter unless the incumbent undertakes to do the repairs himself?—I think he has the power to delay.

1091. Was your application to the bishop before the report of the surveyor or after the report of the surveyor?—Immediately the intention of the surveyor to come down and inspect the buildings was made known to me.

Mr. *Monk*—continued.

1092. That is after the complaint had been made to the bishop by the rural dean?—Yes.

1093. Do you think that the bishop had power under the Act to delay the matter before he received the report?—Yes.

1094. There is no such power in the Act itself, so far as I am aware. Are you not aware that if you had expressed an intention to the bishop to put the house in a state of repair, the bishop then might have left it entirely in your hands, under the 22nd section?—Yes, I asked him to defer the matter, simply for the present, that was all.

1095. Did you then express any intention to the bishop of putting the house in a state of repair?—I told him that I would do it.

1096. Are you aware that if you informed the bishop in writing that you intended forthwith to put your buildings in a state of proper repair, the bishop had no power to send the surveyor to make further inquiries?—His reply was that the matter had better take its course, and that the surveyor had better inspect, in the ordinary course, and make his report.

1097. Are you aware that under the Act, if you had stated in writing to the bishop your intention to put the buildings in a state of repair, the bishop had no power to take any further proceedings?—But he did take the proceedings.

*Chairman.*

1098. What I gather from you is that you were willing to do the repairs, but that from want of means you wished a longer time to be given to you?—Yes.

Mr. *Freshfield.*

1099. If I understand you rightly, your objection extends to the principle of the Act?—I do not find any fault with the Act, but I object to its details very much.

1100. I think you say that you do not find any fault with the surveyor; you do not think that he exceeded his duty?—No.

1101. And yet he intended that you should put the house in its original state of perfection?—Yes.

1102. Do you not think that that is rather more than an incumbent should be required to do?—I do, because the house was a very large house, and was almost a palace in point of size.

1103. Then, if I understand you rightly, you think that the Act allows the surveyor to go too far in imposing liability upon the incumbent?—Yes.

Mr. *Birley.*

1104. Did I correctly understand you to say, that you were unable to borrow from Queen Anne's Bounty?—I myself did not apply, because I resigned; I do not know what has taken place with regard to it recently.

1105. What is the value of the living?—The net value of it is about 120 *l.*

*Chairman.*

1106. I gather from your evidence that the value of the living is about 120 *l.*; that you spent

*Chairman*—continued.

spent about 200 *l.* in contribution towards the new building in 1864; and that you then had a bill brought against you for 171 *l.* on quitting; and you say that you did as much as you could in keeping the house wind and water tight?—Yes, quite so. Some of those buildings have since been pulled down.

1107. Did you make any application to Queen Anne's Bounty Board?—I did not.

Mr. *Freshfield.*

1108. Did you understand that they would not advance you any money?—I was given to understand that they would not do so.

*Chairman.*

1109. And you having no means of meeting this amount, the bishop kindly suggested that the better way would be for you to resign?—Yes.

Mr. Charles John Simmons, called in; and Examined.



*Chairman.*

1110. You are a Solicitor, I think, residing at Wrington in Somersetshire?—I am.

1111. You are acquainted, I think, with the provisions of the 58th and 59th sections of this Act, which have particular reference to ecclesiastical property out on lease?—I am.

1112. And I believe that you have in your district certain rectorial manors, and Wrington is one of them?—Yes.

1113. Under the custom of Wrington Manor, at all events, a portion of the glebe land attached to the living has from time to time been granted out on lease for lives, has it not?—It has been so under the rectorial manor.

1114. The 58th section exempts the rector from an obligation in respect of those buildings, so long as the lease continues, does it not?—It does.

1115. That mode of leasing church property, I believe, is now terminated?—It is with incumbencies since a certain date.

1116. Will you speak with reference to a case which came under your knowledge where a small manorial property belonging to the rector, consisting of a house and two acres of land, fell in?—In the year 1873, the last of three lives having fallen in, the property fell into the hands of the rector; the estate of the former tenant was in administration in the Court of Chancery.

1117. Had this lease been granted by the rector himself?—Not by the present rector, but by a rector as long ago as the year 1807, I think; and in 1873 the last of the three lives dropped. I have counterparts of the leases of the same property for 300 years, I think; the endorsement on the counterpart lease is from the Rev. William Leeves to Mr. Samuel Loscombe James, and it is dated the 15th of July 1807.

1118. On the lease falling in, what did the bishop do?—The bishop at the request of the rector, ordered one of the diocesan surveyors to inspect and report upon the state of the repairs.

1119. Did the lease, the counterpart of which you say you have there, contain a covenant on the part of the lessees to do the repairs?—It did.

1120. And the estate of the lessee was liable under that covenant?—The estate of one of the lessees was liable; that is all that perhaps is necessary for this case; there are two parties liable.

1121. You state that the estate of the lessee was under administration in the Court of Chancery; will you state what happened?—When the rector requested the bishop to send the surveyor, he at the same time requested that notice should be given, and that, if possible, an independent surveyor might be allowed to attend

*Chairman*—continued.

with the diocesan surveyor on the part of the former lessees; that was not complied with; the bishop's secretary stated that the surveyor's report must be an independent one, and that that could not be done; I, myself, also made a similar request to the diocesan surveyor, but he declined.

1122. Did the surveyor send in a report?—He did.

1123. What was the amount?—The report as to that house includes another small property which is included in the same lease, but which had been alienated at a former time; but the amount of dilapidations reported as to that property, I think, was 293 *l.*

1124. Then, I suppose you, as the solicitor, sent this on to the lessees?—The rector then made his claim in the Vice Chancellor's Chambers against the intestates estate (it was an intestate estate); it was there opposed.

1125. The parties were not willing to accept this?—Some were and some were not; those who were unwilling to accept it had a larger interest in the matter, and they opposed it strongly.

1126. I suppose that you carried on some negotiations to induce them to pay the amount?—I did; I was also myself concerned in these Chancery proceedings, on behalf of some of the parties who were liable for those repairs, and my clients were willing to adopt that report.

1127. And you hoped to have carried it out amicably?—We hoped to have done so.

1128. The others, you say, would not agree to it?—They would not agree to it; the consequence was, that each party had to name another surveyor who named a referee.

1129. And a reference was directed by the court as to what the liability for repairs amounted to?—Yes.

1130. Then they went to work; and what did they do?—The two surveyors could not agree, and they had to call in their referee; the referee, I should mention, was one of the diocesan surveyors; there are three diocesan surveyors in the diocese of Bath and Wells; and the referee was one of them; he gave his award, and his award was 213 *l.*, instead of 293 *l.*

1131. Then the rector had to pay over the 293 *l.*, I suppose?—I do not think he is required by the Act to do that. He was called upon by the order of the bishop to effect the repairs within a certain time; but in this case it was not a vacant living, nor was it under a sequestration; it was paid to the rector, at all events, and is now in the rector's hands.

1132. Then how is the rector detrimented?—The rector is required to effect repairs to the extent of 293 *l.*, while the award of the referee

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assesses 213 *l.* as the obligation of the lessee to the living.

1133. Has he had to pay anything more?—He has had to pay upwards of 10 *l.* to the diocesan surveyor, in the first instance, for his report, and he has had to pay 17 *l.* odd for his share of the expenses of the reference.

1134. That is to say, that he was obliged to go into this question in the Court of Chancery?—He was obliged to go into it in the Court of Chancery, and he had to pay his own costs in the Chancery proceedings, with the exception of a very small sum, which he was allowed for his expenses in proving his debt.

1135. So that without any fault of his own, but from the mere chance of those lessees dying, he became involved in an expense of 100 *l.*, or nearly so, beyond what he could get recouped?—Yes, upwards of 100 *l.*

1136. This Act is binding on present and past incumbents, but not upon any outside parties; is not that so?—That is so. There are other manorial rectories that I know of. There is one in my own immediate neighbourhood, the parish of Chew Magna, where there is a vicarial manor, consisting in a great measure of wretchedly old dilapidated cottages, which are held by copyholders under copies of court roll. What will be the effect if this Act remains in force by-and-by, it would be hard to say.

1137. If the Act is put in force by the surveyors to restore these copyhold cottages to what they were originally, it will cost a large sum?—Unquestionably.

1138. From your knowledge as a lawyer, it is very doubtful, is it not, whether copyhold tenants are liable to repairs after the termination of the copyhold?—They are not liable under covenant, but a jury in the Manor Court might impose it.

1139. Is there not a decision that you cannot recover anything for dilapidations against a copyholder for lives on the termination of the copyhold?—I do not know of any case where it has been recovered.

1140. Assuming the law to be that they cannot recover, then the operation of this Act would make the incumbent liable for what he had no remedy against, would it not?—Exactly.

1141. And if in this case where there was a covenant, the Act had allowed of two surveyors, you think that a fair result would have been arrived at without all this additional expense to the incumbent?—Certainly, some expense would have been saved.

1142. And a sum would have been arrived at which the lessees would have agreed to pay, and which would not have imposed any larger obligation upon the rector?—Quite so.

1143. This Act, I believe, binds no parties except ecclesiastical persons?—That is so.

1144. In your neighbourhood, has there been any general complaint against the Act by the clergy?—There has been.

1145. Do you know of any public meetings having been held about it?—There have been public meetings that I am aware of, one in Bath, and the other in the rural deanery of Axbridge. I know something of the cases that were specially referred to at those meetings.

1146. Do you know anything of the Paulton case?—Yes. Mr. Milward, who is the outgoing incumbent, is a friend of mine, and I know something of the case, and I know the position of the

*Chairman*—continued.

glebe, the subject about which the difference arises.

1147. Is the Paulton case where the east window is?—No, the Paulton case is where a portion of the glebe lies in common with other land. It is now stated that there once existed a fence between the glebe and the other land, but it is doubtful whether there really was one or not; at all events, it is held that there was once a fence, certainly not during the incumbency of the late vicar, and previously to his incumbency, I believe that that actually was not glebe; I think that it has been added to the living since; at all events, there has not been a fence for a very great many of years.

1148. It is some of those open meadows about you where they cut and feed in common, I suppose?—Yes, there is a similar one in my own parish, Wrington. The surveyor now reports that the outgoing incumbent is liable to make good that fence.

Mr. *Beresford Hope.*

1149. Which never existed?—Which within the memory of man never existed, and it is doubtful whether it ever existed. He says that there is some bush standing there, which shows that there was a fence there once, but it is not admitted, certainly.

*Chairman.*

1150. That arbitrary course has alarmed the clergy about there, has it not?—It has very much. They took the opinion of two eminent counsel upon it, and that opinion was adverse to the surveyor's report. I think I am right in stating that Mr. Milward, the late incumbent, objected to the report within the month, so that he set himself right so far. The bishop, acting within the powers given by the Act, took counsel's opinion upon it. That opinion was opposed to the opinion of Dr. Phillimore and Dr. Deane who had previously advised; and a day or two ago, in fact, the very day that I saw Mr. Milward, last Friday, he had received a copy of the Opinion, and the bishop's order to put a fence.

1151. Do you know any other case of a church window in your district?—Yes, that is at Axbridge. The late incumbent, who held the living for some 40 or 50 years, has lately resigned it under the recent Act. There is an east window which has been blocked up; I believe the exact date when it was blocked up is now 122 years ago. There is a reredos of that date erected within the church at the east end. The diocesan inspector reported that it had been blocked up, and that it was necessary that it should be restored to its former state, and there was a charge of, I do not know how much, but a very considerable sum, to the former incumbent. I am afraid that a great mistake was made in the matter. As far as I can read the Act, there was no necessity for his paying if he had objected; but he was a man of peculiar temper, and very independent disposition, and rather than raise the question and dispute it, he paid the money, and I believe paid it out of the last money he had in the world. It was a large sum, too, but I cannot tell you exactly how much it was.

1152. The bishop made the order?—The bishop made the order.

1153. At all events it had been there during the time of that incumbent, and of two or three

of

*Chairman*—continued.

of his predecessors?—The window was blocked up 122 years ago.

Mr. *Beresford Hope.*

1154. He made no remonstrance?—He made no formal remonstrance; he objected, but not within the terms of that clause of the Act. Perhaps I should rather say that he grumbled about it; but he paid it.

*Chairman.*

1155. And without having any very large means?—He did.

1156. And that, I believe, also has caused very strong feeling in your district?—It has caused a very strong feeling.

1157. From the clergy having no voice in the matter themselves?—Yes.

1158. Have you any suggestion to make to the Committee as to how the clergy should be dealt with with regard to dilapidations generally?—I have not. With regard to the point as to which I first spoke, I think that the copyholders and the lessees ought to be brought within the jurisdiction of the tribunal, whatever that may be; and that the order of the bishop or of the archdeacon, whoever may be hereafter the tribunal to decide these questions, should be binding upon them in some way.

1159. Lay impropriators who are liable to repair the chancels are not within the province of the Act, are they?—They are not within the province of the Act.

1160. As regards ordinary cases of a man's dying and a new incumbent being appointed, would you leave the official surveyor to do the work, or would you give the incumbent more discretion?—I think that the feeling of the clergymen in my neighbourhood with whom I have conversed upon the subject is, that the bishop has too much power in the matter, and that they are completely in his hands; and I think that they would prefer that the archdeacons should be the party. They think that the bishop has quite enough to do without attending to these matters, and that any questions arising under this Act would be referred perhaps to his secretary; and that the archdeacons could do the work more satisfactorily. I see that there is a difficulty about it, if laymen, such as copyholders and lessees, are to be brought within the operation of the Act; but I think that something might be devised.

1161. They would perhaps like a lay tribunal?—Perhaps they might.

1162. Should you see any difficulty in forming a simple lay tribunal in cases of legal questions?—If any parties interested in the matter required an assessor to be nominated, an assessor might sit with the archdeacons to decide such questions as these.

1163. And he would be in the immediate locality, and it would be less expensive?—Yes; I think with regard to the cost that it is very hard upon the incumbent that he should have to pay heavy costs, and it is very uncertain too. In the case that I have particularly referred to the surveyor did not consider himself bound by the table of fees that was fixed by the bishop; he considered that this was not a residence, and he charged a commission on the amount of assessment or award. That was in the copyhold case to which I have referred.

Mr. *Birley.*

1164. With reference to the east window, which you say existed 120 years ago, what was the meaning of bringing this claim?—That I cannot tell you.

1165. Was it supposed that the Act was imperative?—Yes, it was so contended.

1166. Of course it would be monstrous to do it upon any other ground?—I should myself have thought that the 70th section would have saved it, and such was the opinion of Dr. Deane and Dr. Phillimore. Exactly the same rule, whatever it may be, would apply to the case of the fence at Paulton as to this; because an earlier section of the Act enacts that fences and hedges should be classed with buildings. The counsel who advised the bishop in the other case was of a different opinion. I think, therefore, that the question ought to be settled, if the Act is amended in any way, so as to place it beyond all doubt, and so as to carry out the 70th section, which appears to me to meet the case, though it is not considered so clear as to satisfy other people. The adverse opinion was that of Mr. Philbrick, but I have not a copy of it.

Mr. *Beresford Hope.*

1167. May I ask the name of the surveyor who ordered this east window to be restored?—Mr. Hippesley, of Wells. He is one of the surveyors. He is also the surveyor who made the award.

Mr. *Birley.*

1168. In the case of chancels, do the Governors of Queen Anne's Bounty lend the money?—I believe they do, but the case has not occurred to me.

*Chairman.*

1169. With regard to the question of expenses, do you consider it fair or unfair that the incumbent appealing should pay the whole expenses, if he is right?—I think that it is very hard that he should have to do so.

Mr. *Gregory.*

1170. Under the old law, in the case of premises under lease, on the termination of the tenancy for life of the incumbent, that is to say, upon his death, the party coming into the living, the next incumbent, would have had a claim against his representatives, would he not?—He would.

1171. And that would have been taken upon a valuation as between those representatives and the new incumbent, each appointing a surveyor on his own behalf?—Yes.

1172. That would have been perfectly independent, would it not, of any valuation that there might have been between the preceding incumbent and the lessees?—Yes.

1173. So that the new incumbent, under the old law, would not have been in any degree bound by the valuation which had taken place between the incumbent and the lessees?—No.

1174. Then, as I understand, the present Act has made no alteration in that respect; there would have been an independent valuation under the old law as there is an independent valuation under the new one?—Yes.

1175. And it is not by the operation of the new Act that that grievance which you speak of is created?—I do not state that it is a grievance under the Act; but this Act was intended to

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Mr. *Gregory*—continued.

obviate grievances, and it has not effected that purpose.

1176. As I understand, the intention of the Act was to prevent claims coming upon the representatives of an incumbent at the time of his decease, and to cause the liability for repairs to take effect during his incumbency from time to time, so as to keep the buildings in permanent repair?—It was.

1177. You propose that the valuation should be binding upon the lessees, do you not?—If it could be made so.

1178. That is rather a wide scope to give to it, is it not?—It might be done by an Act of Parliament of course.

1179. At present the parties are under liability in respect of the covenants in their leases?—Yes.

1180. And that liability is determined by surveyors to be appointed by either party with a reference to an umpire?—Yes.

1181. For the purposes that you contemplate, you would have to change the constitution of that reference or of the reference under the Act, would you not?—Certainly you would.

1182. And the lessee has a voice in the nomination of any surveyor who has to report upon the dilapidations under the direction of the bishops?—Exactly; that is what I would propose.

1183. You propose that he should give notice, as it were, to the lessees, and call upon them to appoint their surveyor?—Yes.

1184. That might in fact have the effect of increasing the number of surveyors, might it not?—As it was, there were four brought into this case.

1185. You spoke about the costs being very heavy in one case, did you not?—They were very heavy in that case.

1186. Under the old law, there would still have been the costs, on the vacancy of the benefice, of two surveyors, and, it might be, of an umpire, would there not?—Yes, if they could not agree.

1187. And there would also have been the cost of the previous reference as between the incumbent and his lessees?—Yes.

1188. That would have been two surveyors, and there might have been an umpire in that case?—There might, certainly.

Mr. *Freshfield.*

1189. In the case which my honourable friend the Member for East Sussex has been referring to, in which the incumbent was made to pay 293 *l.*, recovering only from the estate of the late incumbent 213 *l.*, is it clear that the Court of Chancery would not have relieved him from that liability, that is from paying the sum of 293 *l.* when only 213 *l.* was due?—The bishop's order was conclusive.

Mr. *Freshfield*—continued.

1190. But do you not think that the Court of Chancery would have interfered?—I do not think that the Court of Chancery could have interfered in a case of that sort.

1191. Might they not have granted an injunction to prevent the enforcement of a liability which the Court of Chancery had declared not to exist?—No, I think not.

*Chairman.*

1192. Would you think it desirable to separate the classes of dilapidations which have been mentioned by the previous witnesses?—I had never considered the matter until I heard a witness here asked the question, and it occurred to me that it would be feasible, desirable, and proper. Different surveyors take different views as to their duties. For instance, the gentleman who made this report in the first instance is of opinion that no decay whatever should take place in ecclesiastical buildings, that they should be always in a state of newness.

1193. That is the opinion of the surveyor in your district?—Yes; and I believe that that is the correct opinion, too, without allowing for reasonable wear and tear.

1194. And, in the decision of that you say the incumbent has no voice under the present Act?—No voice at all.

Mr. *Gregory.*

1195. Will you allow me to ask who took the opinion of Mr. Philbrick?—The Bishop of Bath and Wells.

1196. Have you seen the statement upon which Mr. Philbrick's opinion was given?—I have seen it, but I have not had an opportunity of reading it with sufficient care to tell you the grounds upon which the opinion was given.

1197. I suppose that he refers to the case of White *v.* Metcalfe, does he not?—I do not know.

*Chairman.*

1198. What was the name of the incumbent in the church window case?—Mr. Beadon.

The Reverend CHARLES T. ASTLEY, called in; and Examined.

Rev. *C. T. Astley.*

*Chairman.*

1199. ARE you at present the Incumbent of Brasted?—I have exchanged from Brasted to Gillingham-next-Chatham.

1200. At the present moment you are the Vicar of Gillingham?—I am.

1201. You were for some few years, I think, the incumbent of Brasted near Sevenoaks?—Twelve years.

1202. When you went to Brasted, what happened with regard to the dilapidations?—When I first went to Brasted in the year 1864 I received 160 *l.* for dilapidations. The dilapidations included the house, outbuildings (consisting of

*Chairman*—continued.

two very tumbledown cow-houses, and pigsties in a similar state), the chancel of the church, and glebe fences, there being 75 acres of glebe.

1203. I think that the house at that time had not been very long built?—The house was built entirely new from the foundations in 1846.

1204. Was there any charge upon the living in respect of the buildings?—I was paying at first about 90 *l.* a year to Queen Anne's Bounty fund. There was 1,500 *l.* borrowed in 1846, and it had 10 years to run when I came into the living.

1205. You stayed long enough to pay the greater

*Chairman*—continued.

greater part of that off, I suppose?—I paid off the last instalment last year.

1206. Was that a well-built house, or a badly-built house, so far as your experience goes?—I should say that it was almost as badly built as a house could possibly be.

1207. What is the value of the Brasted living?—The Brasted living is a good living; it is 1,000 *l.* a year gross.

1208. And it would justify a fair house?—Certainly.

1209. I suppose that in the dilapidation it was treated almost as a new house?—It was treated as a new house, and I told the surveyor whom I sent in (it was the case of a widow with 10 children) not to be severe, but to accept whatever was proposed by the other surveyor, and to make no demur.

1210. How much did you spend in remedying the defects in this house?—I found so many bad defects that I set to work at once to remedy them before going into residence, intending to spend 300 *l.* upon the house; but I found before I had finished that what I had spent amounted to about 700 *l.* out of my own pocket.

Mr. *Beresford Hope.*

1211. Do you mean constructional defects?—I mean constructional defects, defects in drainage, and in many other respects. For instance, I found surrounding the house three cesspools, all sunk in a bed of loose porous sand, formed of uncemented bricks, and communicating one with the other by means of drains formed of common drain pipes. The consequence was that all the matter percolated through those drain pipes into the porous sand, and thence into the well that supplied the house.

*Chairman.*

1212. At all events you spent this money?—I spent this money.

1213. Did you also borrow some further money?—I borrowed some money from Queen Anne's Bounty for building a new garden wall, new cowhouses, pigsties, and other things. I found that I had come to the end of my tether.

1214. Then in the course of 10 years did you spend 1,200 *l.*?—Out of my own pocket, including what I am spending now, I shall have spent considerably more than 1,200 *l.*, not including annual repairs.

1215. In addition, you rebuilt the chancel, I believe?—I rebuilt the chancel in 1866, not entirely at my own cost, but with the aid of my own personal friends; the church was rebuilt at the same time.

1216. In 1874 you left, did you not?—I left England in 1870, and I was absent until last year, on account of ill-health.

1217. Was there any representation made with respect to dilapidations?—A representation was made to me at the end of the year 1873, by my *locum tenens*, that the house was getting into a state of dilapidation, and required being looked to. I had left orders when I left the country in 1870 that the house should be put in proper repair annually, and I gave my *locum tenens carte blanche* to have any repairs done that were necessary, whenever he saw the necessity arise. On receiving this report as regards the dilapidations of the house, I desired a surveyor of my own appointment to look over the house for me, my intention being, if the report of the surveyor should be in accordance with what had been represented to me by my *locum tenens*, and if the dilapidations were large, to apply to Queen Anne's Bounty for a grant, feeling certain that the dilapidations, if large as alleged, were due, not to any neglect of my own, but to originally bad construction, bad materials, and bad workmanship.

*Chairman*—continued.

1218. What was the report which your surveyor made to you?—The report which my surveyor made to me was, that the repairs would cost about 160 *l.*; that was in 1874. This estimate included simply ordinary repairs, such as outside painting, &c., besides one or two slight settlements that had taken place, and other matters connected with the glebe fences and glebe gates, and so on; then I thought the matter over, and knowing that there were a large number of defects in the house that required correction, which I had not been able to go into when I first went into it, I made up my mind to have the diocesan surveyor in, and to apply for a grant from Queen Anne's Bounty, that I might correct all those faults which I had seen from time to time, and which really needed correction, and so might put the house into a thorough state of soundness and repair.

1219. When did the official surveyor come down?—He came down in the summer of 1874, and sent in his report for 698 *l.*, say 700 *l.* in round numbers.

1220. After spending the money?—I did not spend at that time any money; I had simply sent down my own surveyor as a preliminary, as a guide to myself to know whether I should apply for a grant or not. I mean for the subtantial repairs of the house and premises.

Mr. *Monk.*

1221. Not for any out-buildings?—Including out-buildings; the rectory house, offices, out-buildings, and glebe land.

Mr. *Gregory.*

1222. What is the extent of the glebe lands?—There is 74 acres of glebe, but most of it is let under agreement with the tenants to keep the fences and gates in repair.

Mr. *Wait.*

1223. That may possibly include walls, gates, and fences, I suppose?—This would include fences, but no walls; but the fences were all in a very fair state of repair, and the gates as well.

Mr. *Mouk.*

1224. But whatever might have been the agreement with the tenant, the diocesan surveyor would value the whole of the dilapidations as coming upon the incumbent?—Quite so; but the fences would embrace a very small portion of that amount.

Mr. *Gregory.*

1225. Are there any hop oasts upon the glebe?—None.

Mr. *Monk.*

1226. What did the house originally cost to build?—I do not know; but I have heard the sum stated at 3,000 *l.*, of which 1,500 *l.* was borrowed from Queen Anne's Bounty; it is a large house.

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Mr. *Beresford Hope.*

1227. Was it built in the time of Dr. Mill's incumbency?—Yes; it was built for Dr. Mills.

Mr. *Freshfield.*

1228. You appear to have been conscious that there were original defects in the house?—I discovered a large number of defects before I went into the house; I corrected a good many of them, but others I found I could not correct. They were not all of them defects that would lead to immediate dilapidation, but they were defects that would do so in the course of time.

*Chairman.*

1229. I see that there are a large number of exterior repairs, such as taking out the joints of the stones, and so forth?—Yes, there were a great many exterior repairs.

1230. What happened after this report was sent in?—When I received that report I was in the south of France; and I found that I had no time to appeal against it before the expiration of the month, the time allowed for appealing, for I did not receive it for three weeks after it was dated. The question therefore arose in my mind, shall I appeal to Queen Anne's Bounty for a grant upon this report, or shall I appeal against the report; and looking at the shortness of the time given, I decided upon appealing to Queen Anne's Bounty, instead of appealing against the report, accepting the report, and appealing for a grant to meet the required expenditure.

1231. What did the Governors of Queen Anne's Bounty do?—They declined, without giving any reason for declining. I had written to a builder in the parish, and requested him to put on paper a certificate of his knowledge of the state of the house, and what I had spent when I went into it, and what were the causes of the substantial dilapidations that were alleged to exist; he accordingly prepared such a certificate, and got it signed by another builder, and that certificate was sent up to Queen Anne's Bounty with my application for a grant.

1232. I notice a remark here, that the surveyor required you to re-roof the house with seven pound lead all over, in lieu of the four pound lead that was put there originally?—Yes, in all the gutters. I have just put a whole ton of lead on the top of the house.

1233. Did you protest against that?—I protested against the whole report.

1234. But you had no remedy, the matter having become law under the operation of the Statute?—I had no remedy whatever.

1235. You say that Queen Anne's Bounty Board gave you no reason for declining to make the grant?—They gave me no reason; I would not, however, let the matter rest, and I wrote to them again and again, and I finally sent my legal adviser to the archbishop to endeavour to obtain a reason for their refusal of a grant; after a great deal of trouble and correspondence, the reason sent back was, that they declined in consequence of the dilapidations having taken place during my incumbency; which was a reason directly in the teeth of the certificate sent up by the two builders stating that the dilapidations had taken place in consequence of the causes which I have mentioned, namely, originally defective plans, bad materials, and bad workmanship.

1236. You say that you had a certificate from two competent builders?—I had a certificate from two builders in the parish, a builder, and a master mason, who knew the house thoroughly.

*Chairman*—continued.

1237. Have you carried out those repairs yourself?—Perhaps I had better state that upon this I appealed for a lengthened time, which the archbishop granted, and I returned home as soon as I could in the spring of 1875, determining, in the first instance, to appeal against the report before I did anything, and, at the same time to obtain the archbishop's permission to take down certain buildings mentioned in the report, which I was required to restore at a great cost; that is to say, those old sheds that I have spoken of before, a cow-house, a cart-shed, which I had put up for my own convenience, simply made of timber, and roofed over with heather, a hen-house, which I built for my own amusement, with my own hands, and a shed over the pump which I put up myself (I am very fond of manual labour). Those were all put down to be restored at considerable cost, and I appealed against many of them as having been made with my own hands. The hen-house, for instance, which I put up at a cost of 10 *l.*, was required to be restored, and the cost of restoration was estimated by one builder at 40 *l.*, about. "Hen-house; thoroughly repair in cement the brick foundation of the house, boarding, framing, roofs, &c., and re-tile, reinstate defective door sill, &c." That was something I put up myself. Then here is another point which I objected to; "open the well and thoroughly examine, clean, and repair same as required, and make good defects," and so on. That well I caused to be sunk myself, at a cost of about 50 *l.* 10 years ago. The well which I found supplying the house with water was poisoned by the matter from cesspools which I have spoken of percolating through the loose sand; I filled up the cesspools and made a new system of drainage, carrying it out a hundred yards from the house into the orchard.

Mr. *Beresford Hope.*

1238. Was this the old drainage that was left there when the new house was built?—No, the site of the house had been altered entirely.

*Chairman.*

1239. You complain that, having sunk a new well to remedy the defects of the old one, you had a large imposition in respect of it cast upon you?—Yes, and what would be called by builders speculative work; when I put this report out to invite tenders upon it, the lowest tender sent in was 1,000 *l.*; another was 1,200 *l.*, and another 1,350 *l.*; I wrote to two of the builders inquiring how it was that they required so large a sum, and the answer was that the report was at once so stringent and so vague, and required so much work of a speculative nature to be done, that they were obliged to protect themselves by a very large margin.

1240. You say that you made an application to the archbishop for permission to pull down some of the buildings which you had put up, and which you had omitted to take down?—Yes, I might have taken down the old cow-house when the new one was built; but on the suggestion of my man servant, that it would be useful for a cart-shed, and so on, I left it standing for my own convenience. When I appealed to the archbishop, I was obliged to call a vestry meeting, and to obtain the consent of the vestry to have this

and

*Chairman*—continued.

and other buildings taken down, and to obtain a faculty from the diocesan registry; in due course, after about two months' delay, the faculty was got, and some of the buildings were taken down, the hen-house and shed over the pump, and one or two useless fences, and small matters of that kind. There were two buildings, however, the old cow-shed and the cart-shed, which I could not take down at the time, because they were let with a part of the glebe, and of course I was obliged to give my tenant due notice; this I represented to the archbishop, and desired that the new surveyor for whom I had appealed, should be sent down immediately, notwithstanding; that was in the summer of last year, last July; the reply I got was a question as to whether the buildings specified in the faculty had been already taken down and removed out of the place or not; I wrote back simply to give the explanation which I have given to you, namely, that I had taken down such of the buildings as I could, but that I could not take down the other two as they were let to a tenant. The reply upon that was that the new surveyor could not come down until the buildings had been removed, and until I sent up a certificate to that effect.

1241. Would you have to pay additional fees for all those things?—You have to pay fees for everything. The archbishop's secretary said to me at my first interview with the archbishop, "Perhaps you are aware that in applying for a new surveyor you will have to pay the cost yourself," to which I replied, "I am perfectly aware, Mr. Lee, that I cannot at present put one foot before the other without its costing me 5 *l.*"

1242. Are the buildings now pulled down?—The buildings are now pulled down, but they were not pulled down until quite recently, upon my exchange. Finding that nothing was being done, and that the new surveyor did not come, last autumn, in consequence of one of my churchwardens coming to me and saying, "Sir, it is a great pity that nothing should be done to the rectory, because if it is left over the winter, possibly a great deal of extra damage will accrue," I took the matter in hand myself, and without reference to surveyor or anybody, I commenced the repairs, working upon Mr. Clark's report as far as I could and as far as I felt I ought to do.

1243. And you have been spending your money in carrying that out?—I have been spending my money in carrying it out.

1244. When you quitted Brasted and went to Gillingham, was there another survey made?—Another survey has just been made, but the result of it I do not yet know, and possibly I may have to pay still more.

Mr. *Beresford Hope.*

1245. Then the present survey was not in anticipation of your leaving Brasted?—No; it would have been made whether I left Brasted or not. I had no intention of leaving Brasted at the time I had the first survey made; but I thought that it would be for my own advantage, and for the advantage of the living, to put myself under the Act.

*Chairman.*

1246. Having heard of these dilapidations while you were abroad, you thought that you had better bring yourself under the five years' clause, and apply to the bishop to have the surveyor sent to look at the buildings?—Just so.

1247. And the result of that application was that a surveyor was sent down and he made that report?—Yes.

1248. After some negociation with Queen Anne's Bounty and the bishop's secretary, and a faculty being obtained for pulling down certain buildings, you then took upon yourself to go into the repairs and do them as well as you could?—Yes, working upon Mr. Clark's lines as far as I possibly could, and the repairs are completely in accordance with his report, as far as I could go by it.

1249. Before obtaining a final certificate from the surveyor, you, for some reason or other, health or otherwise, exchanged to Gillingham?—I exchanged to Gillingham, and then Mr. Clark had to survey Brasted again on my vacation.

1250. And you did not raise the question whether the former report would have saved your having this report?—Had I obtained the certificate under the former report, of course I should have been saved the present survey.

1251. And in the survey in 1874, and in the one that has been made in 1876, you had no voice yourself in any way?—None whatever; and my experience as to the appeal to the bishop, which is given by the Act, is that if you object to the report made in the first instance, and make a complaint that the ecclesiastical machine is pressing very heavily upon your right shoulder, the ordinary consults with his chief engineer, and the machinery is cleverly adjusted so as to press with equal weight upon the left shoulder, without the right shoulder being relieved in the least.

1252. You think that the power of appeal under the Act is of no practical benefit?—It is useless. It is useful in this respect; that what with surveyor's fees and lawyer's fees, you have the pleasure of being eased of a large sum, in addition to what you have to spend upon your house. I have already had to pay up nearly 100 *l.* between lawyers and surveyors with reference to this very report, in endeavouring to rid myself of an iniquitous burden. You speak of the living being a good one; I submit that the question of the value of the living does not enter into the matter at all. I am speaking not for myself but for others; I know that if this Act presses heavily upon me it must press with much greater weight upon many others.

1253. You consider that all the burden with reference to the house has been cast upon you, and that you had no voice or right of remonstrance?—Quite so?

1254. And the end has been that you have spent a very large sum of money and quitted the place?—Quite so. Of course, as a rule, a small incumbency would have a smaller house upon it, and therefore the cost would not be so great.

1255. But, relatively, the same complaint would apply as to having no power either of remonstrance, or representation, or selection?—Just so.

1256. I think you said that you had rebuilt the chancel?—Yes. The chancel does not enter into the first report at all. It was rebuilt in 1866. I cannot say what the result of the further survey will be.

1257. One principal complaint that you make is as to being called upon on the one side to keep

[Rev. C. T. Astley.

1 May 1876.

*Chairman*—continued.

up all the buildings in the state in which they were when put there, and the other to make an entirely new arrangement with regard to the weight of lead?—Yes, but that is only one point; there are many other points. I reckon that the buildings of the benefice have cost me since I have been there 120 *l.* a year, including what I spent when I first went to it and what I have just been spending. I should have been many hundreds of pounds better off if I had had no glebe house at all, and had simply rented a house at 70 *l.* a year.

Mr. *Beresford Hope.*

1258. This house is a large house, is it not?—It is a large house. It is more than sufficient for an ordinary clergyman's family.

1259. The defects were defects of construction and drainage?—The defects were so numerous and so varied that I could really hardly enter into them. For instance, glass, iron, stone, and lead are so used that you cannot keep out either wind or water, and the result is decay of the stonework; I have had to replace stone mullions, and all that sort of thing.

Mr. *Birley.*

1260. Is not this an exceptional case; could any Act of Parliament provide against those structural defects?—I have never met with a single clergyman who has not complained of the Act in a more or less strong manner.

1261. What remedy would you propose, from your experience of the working of the Act?—Perhaps the remedies that I should propose would be rather sweeping; I should propose to have no official surveyor whatever.

1262. You would leave it to be a matter of arrangement between the outgoing and incoming incumbents, or their representatives?—Yes; I should be disposed to do so. I have noted down one or two matters which I thought I might mention to the Committee. I should be disposed to suggest something of this kind: I should prefer going back to the old plan of having two surveyors, one for each side, unless the parties interested could agree upon one to act for both sides. In the case of vacancy by death, one to be named by the executors of the deceased clergyman and one by the ordinary. I would give the bishop a voice in the matter then. Should the two disagree, then a referee should be named by the rural dean. I should prefer the rural dean either to the archdeacon or the bishop as the nominator of a referee, because he has more sympathy with the clergy, and would be more likely to be outside the official routine. The bishop would most likely name the Ecclesiastical Commissioners' surveyor, who would of course side with the bishop's original surveyor.

Mr. *Wait.*

1263. Would you allow those two surveyors you speak of to be any persons who called themselves surveyors?—I should propose that the choice should be unrestricted, with this simple proviso, that the surveyor should be a duly qualified man, either an architect or a surveyor properly so called, or a competent builder; or there is many a land agent who would be quite as competent as any other man.

1264. Then, practically, the liberty of choice would be unrestricted?—The liberty of choice would be unrestricted within the limits of the diocese. In case of exchange, I should propose that each clergyman should name a surveyor, and that the two surveyors should visit each benefice together. If I may be permitted I will give a reason for that presently. In the next place, in the case of a clergyman inviting the operation of the Act, or being proceeded against by information, he should have the appointment of one surveyor, and the bishop the other. There is one point which I would mention in reference to a clergyman's inviting the operation of the Act, as I did, to bring himself under the five years' clause. A clergyman, putting himself voluntarily under the Act, is actually in a worse position than a clergyman against whom an information has been laid, either by the churchwardens, or by the rural dean, or by any other party; because, in the latter case, he, on writing to his ordinary, and saying that it was his intention to put the house in repair immediately, would be exempt from all further operation of the Act, except that when the work was done the surveyor would have to come down and to see that it was properly done. But, in my case, where I put myself under the Act voluntarily, I was simply like a bull in a net, and could not move.

Mr. *Wait*—continued.

Mr. *Birley.*

1265. Do you approve of the proposal to separate landlord's repairs and tenant's repairs?—I have not looked at it, and I do not like to offer an opinion upon it without considering the matter. Then I would suggest that the fees should be fixed absolutely, and not be in any way dependent upon the amount of the award. I think that is a point of very great importance. One would not for a single moment say that the surveyors would consciously be influenced by the larger amount of fee in consequence of the award being larger, but at the same time one knows what human nature is, and I would not trust myself in such a matter.

1266. You think that they should be paid according to time and not according to value?—I think they should be paid according to time, and not according to value. I would propose that the fee should be a charge of 1½ per cent. upon the gross income of a living, or of 2 per cent. upon the net income for such survey.

Mr. *Beresford Hope.*

1267. Not for a general insurance?—No, the payment of the surveyor's fee. I have paid the diocesan surveyor 22 *l.* 10 *s.* already, and I shall have to pay some more. I have to pay on both sides. I had to pay the surveyor at Brasted, and I have to pay the surveyor at Gillingham as well. Then, again, there is another point that is a great hardship, in reference to putting this lead upon the roof. I think the surveyor for the Rochester diocese, Mr. Gordon, is here. I have had some conversation with him this morning in reference to the state of the roof of my present vicarage, and the award he has given in my favour in respect to it as compared with the award given against me in respect to the roof of the rectory house at Brasted. In the one case, as I have already stated, I was condemned to take up all the 4 lb. lead that was originally put upon the house in all the gutters rising up six inches under the slates, and to relay new 7 lb. lead, ascending 12 inches under the slates; I have accordingly put some 21 cwt. of lead on. In regard to my house

Mr. *Beresford Hope*—continued.

house at Gillingham, I would mention that it was a very stormy day yesterday, heavy rains, and blowing hard from the south-west; this showed the weak joints of the armour, for the rain came in in five or six places, in the upper storey. At 6 o'clock this morning I got up, and I and my man servant ascended to the top of the house together, and we examined the roof all over; I found that the lead is very much thinner than what I was condemned to put down at Brasted; the rain beats in at every place where the lead overlaps, and the lead only ascends 2½ inches under the slates. Mr. Hills, the surveyor in my present diocese, tells me that I have no remedy whatever in that respect, and he has not noticed it in his report; so that I get nothing in respect of the roof, although the water comes in in all parts.

1268. What diocese is Gillingham in?—Rochester.

1269. Then you want to draw a distinction between the surveyor in Canterbury having ordered a thorough reconstruction of the roof, and the surveyor in Rochester not having done so?—I have no doubt that both the surveyors have acted from a perfectly conscientious view of their several duties, only that the surveyor in the diocese of Canterbury takes a very stringent view of his duties, and the surveyor in the diocese of Rochester takes a more lenient, and what I should call a more equitable view of his duties.

1270. But between the two stools you found yourself a sufferer?—Between the two stools I have fallen to the ground.

Mr. *Freshfield.*

1271. You seem to object to the principle of any Act of Parliament which admits of the imposition upon an incumbent of any liability to make good the errors or negligencies of the original constructor?—I think that the permission in that respect, given in the Act, to Queen Anne's Bounty, to lend money, should be made compulsory; that where it can be distinctly proved that the dilapidations are not due to any neglect on the part of the incumbent, he should not be saddled with the cost of repairing original defects and errors in construction, and materials, and so on.

1272. *A fortiori,* you would object to the possibility of the imposition of a liability to substitute 7 lb. lead for 4 lb. lead?—Most unquestionably.

Mr. *Freshfield*—continued.

1273. And, in general, I suppose, you object to the power of imposing a liability for anything but dilapidations which have taken place since the construction of the house?—Most certainly. It would appear to me that some surveyors read the Act as though it required them to see that the house was put into such a state as if it had come new from the builder's hands. In my case I had to do more; I had to put it in a better state.

1274. You were required to make the house what it ought to have been and what it never was?—I was.

1275. And that you think very unfair and unjust?—To repeat the word I used before, I think it is iniquitous.

1276. And therefore you object to an Act of Parliament which permits the imposition of such a liability, or lays down such a principle?—Unquestionably.

1277. You have proposed some remedies, but they do not seem to me to go to the root of the matter; ought there not to be some power to lay down a principle by which the surveyors should be bound in surveying houses?—Unquestionably. It would be better for all parties that it should be so; but the remedies I propose would, I think, prevent unjust pressure; in the case of an exchange, for instance, each incumbent should name a surveyor himself, and both surveyors should visit both benefices. That would insure equal measure on both sides.

1278. Still you think that those surveyors in both the cases you referred to, did their duty according to their consciences?—I quite think that.

1279. And you are not prepared to say that they did not do it according to law?—I am not prepared to say that, except that Mr. Hills tells me that he could not legally require the clergyman with whom I had exchanged, to do anything to the roof of my present house; whereas Mr. Clark, in the diocese of Canterbury, thought he was legally compelled to require me to put the roof of the house in the state I have described.

1280. Therefore you are burdened with a liability which you deem iniquitous under the powers of this Act of Parliament?—Just so.

*Thursday, 4th May* 1876.

MEMBERS PRESENT:

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|---|---|
| Mr. Birley. | Mr. Goldney. |
| Lord George Cavendish. | Mr. Gregory. |
| Mr. Cowper-Temple. | Mr. Beresford Hope. |
| Mr. Dodds. | Mr. Monk. |
| Mr. Forester. | Mr. Wait. |
| Mr. Frehsfield. | Mr. Walter. |

GABRIEL GOLDNEY, Esq., IN THE CHAIR.

The Right Reverend the Lord Bishop of Peterborough, attending by permission of the House of Lords; Examined.

Bishop of *Peterborough.*

4 May 1876.

*Chairman.*

1281. I do not know whether your Lordship has considered the question of the law of dilapidations generally as apart from ecclesiastical dilapidations?—Not as apart from ecclesiastical dilapidations.

1282. Not as between tenant for life and reversioner, or landlord and tenant, or lessor and lessee?—No, I cannot say that I have.

1283. You are of course familar with the mode which was generally adopted previously to the passing of the Ecclesiastical Dilapidations Act, 1871, between the representatives of a deceased incumbent and a new incumbent on a vacancy?—I know it tolerably well by repute; but never having held a benefice in England myself, I know more of the Irish Act as to dilapidations than of the English Act.

1284. You are, however, probably aware that neither the bishop, nor the archdeacon, nor the patron interfered as to the amount assessed for the repairs that were required to be done?—Practically, I think, they never did; but by the law of dilapidations, I think that bishops and archdeacons, or the bishops under the Act of Queen Elizabeth, had the power of interfering.

1285. You are aware that the Common Law Courts latterly had interposed, and in some cases issued a prohibition against the ecclesiastical courts dealing with such questions?—Yes, I am aware of that.

1286. So that practically it came under the cognisance and direction of the ordinary tribunals at Westminster Hall?—I think that that probably was so.

1287. It has been the custom in most dioceses to have at the archdeacons' visitations formal presentments from the churchwardens as to the state of repairs of the glebe buildings, has it not?—Yes.

1288. Does your Lordship happen to know of any case where such a presentment was acted upon?—I have never heard of any such case.

1289. But the patron would, in some cases, apply to the Court of Chancery for an injunction to restrain the incumbent from cutting timber, and so forth?—To check waste, I understand that he could do so.

1290. You say that you are not, except by repute, acquainted with the practical mode in

*Chairman*—continued.

which ecclesiastical dilapidations were dealt with previous to the Act of 1871; but you are probably aware that the amount fixed was paid over by the representatives of the late incumbent to the new incumbent?—Yes; and I consider that to have been one of the great defects of the old law.

1291. And that the new incumbent had the amount left in his hands, the power of expending it being under his sole control?—Exactly so.

1292. There was no mode or system, was there, by means of which that expenditure was checked or controlled or ascertained?—No; or even guided.

1293. Until the benefice again became vacated, either upon his death or upon his resignation?—Exactly so.

1294. Then the question arose as between the new incumbent and the old incumbent, or the representatives of the old incumbent; and I believe it is a fact that occasionally arrangements were made between the new incumbent and the old incumbent, or the representatives of the old incumbent, that the dilapidations should not be insisted upon?—Yes; and also between patrons and presentees; the patron presenting upon condition that the presentee did not exact dilapidations from his predecessor.

1295. And sometimes there was an inability, was there not, on the part of the representatives of a deceased incumbent, or on the part of an outgoing incumbent, to find the money that was required?—Frequently.

1296. There is no provision, I think, in the present Act to meet that last case?—The only provision in the present Act to meet that last case, which did not exist in the previous law, is the power of borrowing from Queen Anne's Bounty Board the deficient sum, and charging it on the benefice.

1297. That is practically making the benefice the landlord to do the repairs which the incumbent and his successor, if he himself did not occupy the benefice long enough, would have to meet?—Exactly so.

1298. Your Lordship has considered carefully, I think, the provisions under the present Act?—I have.

1299. And you have also heard that in various parts

*Chairman*—continued.

parts of the country there have been expressions of dissatisfaction by some of the parochial clergy as to the operation of the Act?—I have.

1300. I will venture to read to you, if you will allow me, a summary of the complaints, so that you may be able to direct your attention to them. Evidence has been put before the Committee that the clergy (that is to say, those who have sent me letters, and those who have given evidence before the Committee as to the working of the Act) more or less complain that there are cases of presentation to incumbencies under the old law, and avoidance under the new law, where the views of the surveyors press rather hardly upon the incumbents. A great number of them complain that the incumbents have no voice whatever in the appointment of the surveyors; they complain of the excessive and irresponsible power of the surveyors, which is often very arbitrarily exercised, and they give instances of this. They also complain in some dioceses of the excessive fees of the surveyor, and other charges, and that practically they have no appeal from the surveyor's decision. That takes in a very large ground; and I should like to ask your Lordship whether you think they are right in their complaint as to the latter circumstance of having no voice in the choice of the surveyor, and no power of appeal?—As regards their having no voice in the choice of the surveyors, I think it is hardly correct to say that the incumbents have no choice, inasmuch as the archdeacons and rural deans, with whom the choice is now vested, are incumbents, and they have, of course, a very direct interest in the selection of a good surveyor. But if the clergy generally wish for the election of the surveyor by all the clergy, I see no objection to that whatever; I think it would satisfy the minds of the clergy, although I doubt if they would thereby get better surveyors than are now chosen by the archdeacons and rural deans.

1301. But in cases where the power under the Act is held to have been exhausted by the appointment of either one or two surveyors only, would you suggest that there should be an extension of the number of surveyors?—I am hardly prepared to speak as regards other dioceses. In my own, we divided the diocese into three separate areas, corresponding to the three separate archdeaconries now, and we have a surveyor for each, who is appointed for only five years, which I think is a very important limitation, and subject to re-election at the end of those five years.

1302. Do you think that the power of a surveyor is too large at present and that it ought to be limited?—I do not see that it is too large, because there is a power given to the incumbent of objecting to the surveyor's decision; the surveyor is not, I think, irresponsible.

1303. At the present moment he performs all the functions of judge, counsel, and witness, does he not?—I should rather say that the bishop discharged the functions of judge, and that the surveyor was in the position of a skilled witness giving evidence impartially as regards both parties.

1304. But if there is no appeal within a month, the surveyor's report is absolute as against the incumbent, is it not?—Certainly.

1305. Therefore, unless there is an appeal, the surveyor is the sole judge?—Unless the clergyman objects, the surveyor is the sole judge.

*Chairman*—continued.

1306. And the bishop himself cannot after that time raise the objection?—Quite so.

1307. Therefore, failing that, the surveyor stands in the position of being judge, witness, and counsel too, does he not?—Yes, in every case in which the incumbent does not object.

1308. And during his survey he has the power of refusing altogether to hear the new incumbent or the old incumbent, has he not?—I suppose he has.

1309. Do you happen to know that in your diocese the surveyor has actually done so?—I never heard it; it has never been made a matter of complaint to me that he has done so.

1310. I may say, for the information of the Committee, and I am glad to be able to say to your Lordship, that the clergy of your diocese speak of your kind consideration when complaints have been made. Do you happen to know the case of a gentleman of the name of Smith, who formerly was Vicar of Easton Neston, in Northamptonshire?—There was such a clergyman in my diocese.

1311. He states that he left his incumbency, I think, in the year 1874. Is a gentleman named Law one of the surveyors of your diocese?—He is not.

1312. But he has been called in by you, I think?—Yes, I have occasionally called him in upon appeal.

1313. In cases of appeal, have you or has your secretary ever given any direction to the new surveyor to hear the complaints?—I generally request the clergyman to put his complaints carefully in writing and send them to the new surveyor. Of course it is generally understood that the new surveyor hears everything that the clergyman has to say. That is my general direction.

1314. With regard to the appeal, there is no absolute right of appeal from the surveyor under this Act, except with the sanction of the bishop; that is to say, it is a discretionary matter with the bishop whether he allows the appeal or not?—Whether he allows the validity of the appeal or not; I think that he is bound to receive an application.

1315. By Section 16 of the Dilapidation Act, 1871, "The incumbent, or the sequestrator, if any, may, within one month after the sending the said copy, state in writing to the bishop objections to the report on any grounds of fact or law, and in such case the bishop may, if he shall think fit, at the expense of the party objecting, direct a second report." So that it is entirely in the option of the bishop whether he will hear the objection or not?—I should not say that he has an option as to whether he will hear the objection, but as to whether he will order the second report. I think that the bishop under this section is bound to receive and hear the objection, because the section provides that "the incumbent or the sequestrator, if any, may within one month after the sending the said copy, state in writing to the bishop objections to the report." Therefore the bishop is bound to receive and consider the objections. And you will find in another part of the section that the bishop is to give his decision in contested or objected cases after full consideration of all the circumstances.

1316. The Act does not give any absolute right of appeal, does it?—It gives an absolute

Bishop of *Peterborough.*

4 May 1876.

*Chairman*—continued.

right of objecting to the surveyor's report, I think.

1317. But supposing that the bishop chooses to act upon the first report of the surveyor, he can do so without reference to the objection made, can he not?—I should not say that he can do so without reference to the objection made, because he is bound to read and weigh the objection; and after due consideration of the whole matter, to give his decision; and, moreover, he is bound to give his decision in writing.

1318. But still he may give that decision without entering upon the objection in any way, may he not?—It is conceivable that anyone may act with violent caprice or injustice; but in that case he would be going against the letter of the Act.

1319. As a matter of practice, the bishop would generally entertain the objection?—Most carefully.

1320. But, on the other hand, it must be at the expense of the party complaining, must it not?—Not the first consideration of the complaint; but if, with the consent of the party, a second report is made, then begins a fresh expense to the party complaining.

1321. Under the old law, I think that the incumbent could only be made liable for dilapidations that had occurred by his own default?—I am not quite clear about that

1322. But under the new law, at all events, the bishop is bound to act upon the surveyor's report if it is not objected to, although he may have inserted new things altogether?—Upon reconsideration, I am not quite sure that the bishop is bound to act necessarily upon the surveyor's report, because the Act says that the bishop shall decide, after due consideration of the whole matter, which I imagine gives the bishop the power of going behind the report of a surveyor if he thinks fit; and I may mention, as a matter of fact, that I have myself amended surveyors' reports without receiving any objection from the incumbent.

Mr. *Beresford Hope.*

1323. May I ask your Lordship whether you mean that you made those alterations in the surveyor's report *mero motu*, or in consequence of a formal appeal from an incumbent?—As well as I can remember, I have done so in two cases *mero motu*. One case was where the surveyor's report laid down a principle of law with respect to which I had previously received a contradictory legal opinion; I considered myself warranted at once in saying that that recommendation of the surveyor was contrary to the legal opinion which I had obtained, and I set it aside. In another case the surveyor made a recommendation upon what I may call æsthetic, or architectural, grounds, with reference to the restoration of certain things which he thought desirable for the architectural beauty of the chancel; and I set that aside because it seemed to me that the Act of Parliament contemplated no such thing.

*Chairman.*

1324. Supposing that not to have been done, and the report to have become final by the absence of any objection, under the 23rd section you would be bound to put that in force, I think?—I think so.

1325. This Act, I think, deals in no way with lay impropriators as regards chancels?—I think that that is one of the most serious defects in the Act.

1326. In any new legislation you would propose, I conclude, to provide some way by which lay impropriators, as well as incumbents, should become liable for dilapidations?—Certainly I would.

1327. Would you allow the patron to interfere more or less than he is authorised to do by this Act?—I would allow him to interfere less than he is authorised to do by this Act, in this way: the Act gives the patron, at present, two things, namely, a right of complaint as to the condition of the glebe house, and an absolute right of veto upon the obtaining of a loan from Queen Anne's Bounty Board. The practical result is that a patron has it in his power almost to ruin a clergyman, and practically sometimes to compel him to resign his benefice. I would submit to the Committee this case, which occurred in my own diocese: the patron for two successive incumbencies presented incumbents upon the condition (I think a simoniacal condition) that they would ask no dilapidations from their predecessors. The consequence was, that the house became absolutely ruinous, and it had to be entirely rebuilt.

Mr. *Beresford Hope.*

1328. Under the old law?—The house had to be rebuilt under the present law. The costs were absolutely ruinous to the unfortunate clergyman; I protected him as far as I could under the Act, and I obtained him time to borrow to meet the charge, and he was helped partly by a loan from Queen Anne's Bounty Board; but the patron, if he had been so disposed, could have prevented any of that money being raised by loan, and, consequently, completely and absolutely have ruined the clergyman. I am therefore of opinion that a patron having a direct interest in preventing the loan being charged upon his benefice should be allowed a right of objecting, but not a right of veto.

*Chairman.*

1329. Supposing that he put this Act in force to get the dilapidations made good, and vetoed the advance by Queen Anne's Bounty Board, the value of the advowson in the market, you think, would be considerably increased at the expense of the incumbent?—Clearly. To meet that I would give the patron a power of objecting, but not of vetoing, as regards a loan by Queen Anne's Bounty Board.

1330. Would you give him a right of enforcing those dilapidations without any other authority to check him?—No, I would give him simply the right which the Act now gives him, of complaint under the Act, but no more.

1331. Under the Act as it stands, supposing that a complaint is made, the bishop is bound to send the surveyor, is he not?—Yes.

1332. And then, if the incumbent does not make the objection within the month, the patron has obtained what he wishes, has he not?—Yes, of course, if the clergyman so far neglects his own interest as not to make the objection.

1333. Would you vest in some authority a discretionary power as regards the time within which this expenditure should be made, or the extent

*Chairman*—continued.

extent to which it should go? Under the present law there is a definite time fixed within which those repairs must be done, either with the direction of the surveyor or of the bishop himself, and there is no power to extend that time; and if they are not done then, the sequestration clauses come into operation?—The bishop has a limited power of extending the time.

1334. Would you give him, or whatever authority may be constituted, a larger power of extending the time?—I should be disposed to do so, but the power should be carefully guarded and limited to prevent very great abuse and injury to the benefices.

1335. Take the case of small livings, to which Queen Anne's Bounty Board object to lend money, on account of the insufficiency of the security which they afford; would you suggest that they should have larger power of lending?—I would very much enlarge the power of Queen Anne's Bounty Board, both as to the time for which they grant the loan, the interest which they charge on the loan, and further, as to the degree of relief which they might give altogether to small livings. As I have informed the Chairman, I have prepared a Memorandum upon the subject, which I will take the liberty of reading presently; but I think that very great relief might be given as regards the whole law of dilapidations through the means of Queen Anne's Bounty Board; and as that Board was formed for the augmentation and improvement of poorer benefices, I cannot see a more legitimate application of the money than that.

1336. To return for a moment to the question of appeal, would you give a power of appeal to either a lay tribunal or a quasi lay tribunal; that is to say, would you import into the tribunal some lay element to meet the right which formerly existed of trying the question in the common law courts?—I understand you to mean the possibility of an appeal from the bishop's decision. As regards myself personally, and I think all the bishops I might say, we should be extremely glad of an appeal from the bishop's decision; it would relieve us from very invidious responsibility and anxiety. As regards the clergy, I think it would be a great gain, and a very proper thing, that there should be an appeal from the bishop's decision on all points of law; because then you get ultimately the highest decision of a court of law, which would rule all cases of a like kind throughout England. I doubt whether the clergy would gain much by an appeal from the bishop's decision on matters of fact, because all that a judge of assize or a judge and jury of assize could do in matters of fact would be just what the bishop does now, that is to say, call in a skilled witness or skilled witnesses, and then without viewing the premises, decide to the best of their ability between those conflicting testimonies; and I think the appeal would, probably, when all the costs of going before a superior court had been paid, cost the clergymen more in most cases than it would practically be worth; and I do not think that a judge and jury would deal with matters of fact more favourably for the clergyman than the bishop does, who is in the habit of working the Act every day of his life. I think further, that an appeal as to matters of fact might be disadvantageous to the poorer clergy, because now a clergyman who objects to a surveyor's report gets the decision of one judge, the bishop, for nothing, or may do so; but if he gets the decision of the bishop on a matter of fact, subject to appeal to a court of law, then he never can have that without the risk of a subsequent lawsuit; and a richer and more litigious incumbent would have an advantage over a poorer clergyman. For these reasons, I doubt if appeal on matters of fact from the bishop's decision would be as great a gain to the parochial clergy as some of them think; but if they think so, personally I should be extremely glad if an appeal were given on both points, and I certainly think it very desirable that an appeal should be given on points of law. There is one other observation which I may perhaps be pardoned for making, but I think in these cases the cost of the appeal should not fall upon the bishop who acts as judge in the matter, and has no personal interest whatever, acting judicially.

*Chairman*—continued.

1337. You said that it is cheaper under the present mode; have you, in making that statement, taken into consideration the fees of the surveyor and registrar, and secretary?—I have.

1338. What would you do as regards that?—As regards my own diocese, I think the amount paid to the registrar and surveyors and secretary is really very much exaggerated. I have prepared a tabulated report of the cost of these matters in my diocese, from which it appears that the average payment in uncontested cases to the secretary and registrar (who, in my diocese, are one person) is 1*l.* 9*s.*, and that the average annual receipts of my secretary and registrar since the Act has been passed have amounted only to 57*l.* 2*s.* 4*d.*, which does not do more than pay the additional clerk that he employs to manage this business in the office. The income of the surveyors for the three archdeaconries respectively for the last four and a-half years since the passing of the Act has been 103*l.* 10*s.*, 110*l.* 18*s.*, and 60*l.* 7*s.* 6*d.*

1339. Does that include a per-centage on the works?—No, it does not include a per-centage on works executed; this is simply the cost of the survey.

1340. If the works are executed under the direction of the surveyor, there would be an increased charge, I presume?—Yes, I think 5 per cent.

Mr. *Monk.*

1341. Could you state the average cost of the survey in uncontested cases?—The average cost of surveying in one archdeaconry is 8*l.* 10*s.* 10*d.*, in the next archdeaconry it is 10*l.* 5*s.* 8*d.*, and in the next it is 7*l.* 1*s.* The average, therefore, over the whole diocese is 8*l.* 12*s.* 9*d.* for costs of survey, including surveyor's costs out of pocket, travelling expenses, and the payment of labour on the investigation. Then the entire cost, including the total average amount of payments to all diocesan officers under the Act in each archdeaconry in my diocese, is as follows: In contested cases in one archdeaconry, 10*l.* 13*s.* 10*d.*; in another, 12*l.* 6*s.* 8*d.*; and in another, 9*l.* 2*s.* In uncontested cases in one archdeaconry it has been 9*l.* 19*s.* 10*d.*; in another, 11*l.* 14*s.* 8*d.*; and in another 8*l.* 10*s.* Therefore, putting these all together, and striking an average on all, the total official cost of each survey on an average throughout the diocese would be, in contested cases 10*l.* 14*s.* 2*d.*, and in uncontested cases 9*l.* 18*s* 2*d.*

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1342. That would be in addition, I presume, to the expenses of the second surveyor?—Of course; those are merely official fees.

1343. Calling your Lordship's attention to a return that has been put before the Committee, where money has been borrowed of Queen Anne's Bounty Board, which we assume to be an uncontested case, the Secretary of Queen Anne's Bounty fixes the fees to be paid, does he not?—I presume that he fixes the cost of the mortgage, and so forth; but not the official cost of the survey, which is fixed by the archdeacons and deans under the Act.

1344. I find in a Return which has been put in, that in the diocese of Peterborough, in the case of the rectory of Alexton, that there is a charge allowed to the surveyor of 12 *l.* 2 *s.* 1 *d.*; what is that for?—That would be, I presume, the official scale under the Act.

1345. You stated, did you not, that the cost in contested cases would be 10 *l.*—That is the average amount.

1346. But this is an uncontested case where the money is borrowed?—Of course cases vary somewhat where there is a great deal more work for the surveyor, and more time taken. My Return is of the averge cost.

1347. Is your Lordship aware that in certain dioceses the scale of charges is fixed with reference to the amount to be expended, and a percentage upon it?—I am aware that it is so; I think that it is an exceedingly bad plan; it is a direct premium to the surveyor to make high valuations.

1348. So that where, in addition to the charge of so much a day for inspection, there is a percentage of 5 per cent., or 3 per cent., or 2½ per cent. allowed to the surveyor on the work to be executed, you think that is a vicious principle?—I think it is a decidedly vicious principle; first, it tempts the surveyor to make high valuations; and, secondly, it exposes him to the imputation of having made a high valuation for that reason.

1349. Supposing that there is a charge in the scale of diocesan fees of 5 per cent. to be paid to the surveyor on the amount of the work, would he do anything for that, or would it be expected that the incumbent should employ another surveyor or architect?—The incumbent could not, under the Act, employ another surveyor or architect unless he made an objection.

1350. I mean in doing the work?—He could not employ him except as architect; he could not employ him as contractor under the Act.

1351. But supposing that a man has to expend 500 *l.*, and that the scale of diocesan fees includes a per-centage on that amount, if he employed his own architect he would pay his own architect a commission also, would he not?—Yes.

1352. Therefore, in cases of this sort, he would be naturally almost bound, in order to save himself, to employ the diocesan surveyor as the architect to carry out the work?—Yes.

1353. And that you think objectionable?—I think so; I think the whole system of per-centages decidedly objectionable.

1354. Has your Lordship's attention been at all called to temporary erections by incumbents, specially where they have glebe and occupy the glebe, or where for the temporary accommodation of their tenants they erect buildings of a mere casual character?—Yes.

1355. Should they, in your opinion, have the

*Chairman*—continued.

power to remove those temporary erections if they choose, or should they still be bound by the construction put upon the law to make them permanent?—I take it that they have a power under the Act of pulling them down with the bishop's consent.

1356. But supposing that they have not obtained the bishop's consent when the vacancy occurs?—They can pull them down after the vacancy with the bishop's consent, or under a faculty.

1357. But where the surveyors have made their report without that having been obtained, the power is gone, is it not?—No; I take it (and I have so treated that) that an incumbent, at any time within the 18 months allowed for the completion of the works, may, under the Act, apply for the power of pulling down buildings, and then a modification of the sum to be paid would follow.

1358. But when the report has not been objected to and the new incumbent has paid the money into Queen Anne's Bounty, what happens then?—That, I think, is supposing a case in which the incumbent neglects his interest and rights under the Act; and I do not think that you can make an Act of Parliament which shall provide against such a contingency.

1359. I think that your Lordship has considered the question of dilapidations generally, as to how far the whole system, as at present existing, might be got rid of?—I have carefully considered it.

1360. And you have some mode, which you will perhaps kindly state to the Committee, in which you think the objections and difficulties which now appear to exist might be met?—With the permission of the Chairman and of the Committee, I would briefly state the alteration in the law which I would propose to make, and then, if it is not troubling the Committee too much, I would read a short Memorandum which I have prepared upon the subject. I should propose to get rid of the present system of dilapidations altogether, and to substitute for it a fixed charge upon each benefice, payable either to a diocesan dilapidation board, or I think much preferrably to Queen Anne's Bounty Board, and that such Board should build, repair, and insure glebe houses, the clergyman being, in return for his annual payment, free from all charges now known as dilapidations. I should propose that the diocesan surveyors in that case should be paid by salary, and that there should be a periodical survey of all glebe houses; that secretaries and registrars' fees should be abolished, and the business now done by them be transacted by a clerk or clerks at a fixed salary. I have prepared a Memorandum setting out what seem to me to be advantages of this scheme, which, with the permission of the Chairman, I will read to the Committee: "The principle of the present Ecclesiastical Dilapidations Act seems to me a perfectly sound one. It is that an incumbent possessing an ecclesiastical residence may be regarded as a life tenant of the church on a repairing lease. That his true landlord is the church, has, I think, always been the principle of the law on this subject, which has imposed from the first on the bishop and archdeacons the duty of requiring the clergy to keep in repair their houses and chancels out of the profits of their benefices, and has made neglect of this duty

matter

*Chairman*—continued.

matter of cognisance in the Spiritual Courts. (*See* Phillimore, Vol. 2, pp. 1615-20.) The defect of the old law on the subject was that, though in theory it made the incumbent the tenant of the church, practically it made him the tenant of his successor, inasmuch as it made no provision for official complaint or survey, nor for ascertaining the amount received for dilapidations by the incumbent, nor for its proper expenditure on the premises. Practically, therefore, it came to this, that it was only the successor of the incumbent to whom he had to account for dilapidations. The interests of the benefice were practically unrepresented, and the result was, in many cases, arrangements of all kinds between incumbents to the serious injury of the benefice. The new Act aims at giving effect to the principle that the incumbent is the tenant, not of his successor, but of the church; it does so by the power of complaint which it gives to Church officers and to patrons by entrusting the survey of a benefice to a diocesan officer, by making the bishop the arbiter, and by effectually securing the payment and proper expenditure on the benefice of all sums due for dilapidation. It seems to me, however, still to fail in giving complete effect to its own principle. In every case of the avoidance of a benefice it requires the new incumbent to act as if he were the landlord, or at least as if he we were trustee for the landlord; for it requires him at his own cost to ascertain, and then to recover from his predecessor, the amount due for dilapidations; and if he fail to do this, it requires him to pay it either out of his own pocket, or in the form of an annual charge on his benefice; it appears to me that this state of the law is in some cases (1.) Unjust to the incumbent; (2.) Injurious to the benefice; (3.) Needlessly vexatious in its operation. (1.) It is unjust to the incumbent in the case of neglect of repair by an insolvent predecessor; in every such case the cost of repair falls entirely on the successor, who has to pay for the neglect of his predecessor, whereas he ought clearly only to be liable for dilapidations accruing during his own tenancy. (2.) It is injurious to the benefice, because there being no provision to secure periodical survey or continuous repair, the repairs of the house are still, for the most part, deferred until vacancy; and the result is dilapidations which, if earlier discovered, might have been repaired at comparatively small cost, grow worse year by year to the serious injury of the house, and ultimately, therefore, to that of the income of the benefice. It is injurious further, because it tends to put the interest of the incumbent in direct antagonism to that of the benefice. In all ordinary cases of tenancy it is the interest of the tenant to discover dilapidations, inasmuch at he can call upon his landlord to repair them. In the case of us ecclesiastical tenants, our interest is the other way; it is hardly in human nature that we should be particularly anxious for the discovery of dilapidations which must forthwith be repaired at our own cost, more especially if we have not the money wherewith to repair them. The practical result is, that the house is often (without the knowledge of its occupants) much dilapidated, and that the discovery of this fact comes as a most unpleasant surprise upon the avoidance of the benefice. (3.) The incidence of the Act is often very trying and severe, inasmuch as it often falls heavily upon the family of the incumbent



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after his decease, just at the moment when they are least able to bear it, and when they can no longer provide for it out of the income of the benefice; nor is it any answer to these objections that all these evils might be avoided if incumbents would carefully ascertain and execute from time to time the needful repairs of their glebe houses; for incumbents, not having professional knowedge of such matters, cannot be expected always to know what repairs are needed, or always to have them executed in the best manner; nor, on the other hand, can they be expected to be constantly incurring the cost of calling in a surveyor to advise them on these points. The practical result of all this is: injury to benefices, waste of money, and, in some cases, much suffering, and sometimes actual hardships to incumbents. I would propose to remedy these evils by giving full and complete effect to the principle of the law of dilapidations. I would make the church completely in fact what it is in theory, the landlord of the house of residence; and the incumbent completely in fact what he is in theory, the tenant of the church, but a tenant paying rent instead of being bound to repair. I would, in short, impose on each the ordinary landlord's and tenant's coventants. I would impose on the Church, as represented by Queen Anne's Bounty Board, or by a dilapidation board in each diocese, the duty of building, repairing, and insuring all glebe houses and premises, giving of course to such boards all the powers of borrowing or obtaining grants from the Ecclesiastical Commissioners, or other sources now possessed by incumbents. And I would charge each incumbent a fixed annual rent for his glebe house, either in the form of an *ad valorem* rate on the benefice, or on a valuation by the diocesan surveyor of the cost of keeping that house in repair. In return for this payment I would set the incumbent free from all charges now known as dilapidations. I would pay diocesan surveyors by a salary and require a periodical survey of all glebe houses; I would abolish all fees to secretaries and registrars, and employ a clerk paid by a salary for the necessary office business. I would make the operation of this Act prospective, but would leave it free to present incumbents to place themselves under its operation if they thought fit. Lastly, I may add that I would apply this legislation, as I do all that I have been saying on the subject, to the episcopal and capitular residences equally with parochial ones. The advantages of this plan would be, I think; (1.) As regards the benefice, periodical survey, and timely, and therefore much cheaper, repair; (2.) As regards the incumbent, the substitution of a fixed and definite charge paid while he is in receipt of his annual income for an indefinite claim always hanging over him, and most likely to fall crushingly upon his family after his death. It would, besides, have the advantage of doing away with the litigious element more or less involved, with all its heartburnings, in nearly every case of dilapidations. I am persuaded, however" (and this I wish to submit particularly to the consideration of the Committee) "that neither this nor any other amendment of the law of dilapidations will reach the main cause of the suffering of incumbents in respect of them, which is simply that the income of too many benefices is insufficient for the maintenance of the clergyman, together with the repair of the house of

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residence. It is to be remembered that the clergyman, unlike many other officials, cannot choose a house to suit his income. He is legally bound to reside in, and to keep in repair, an official residence often quite beyond his means. In every such case it is clear that either the clergyman or the house must suffer; formerly it was the house that suffered, now it is the clergyman. The real hardship, however, is not that the dilapidations are too great, but that the income is too small; and the real remedy is not to let the house fall into decay by a lax law of dilapidations, but to improve the income. This may be effected, of course, directly, by increasing the endowment. It would, in many cases, be better effected indirectly, by relieving small livings in whole or in part from the cost of dilapidations. I think that such relief would be a most legitimate application of the funds of Queen Anne's Bounty; and I would ask the Committee to consider whether relief in that direction might not be afforded by the payment from this source of the costs of all surveys of benefices under 300 *l.* a year, and the cost in whole or in part of all repairs of livings under 300 *l.* a year."

Mr. *Beresford Hope.*

1361. A pure benevolence?—A pure benevolence from the Board, which is a board of benevolence.

*Chairman.*

1362, I am sure the Committee are very much obliged to your Lordship for these admirable suggestions. With reference to them, do you confine your views to dwelling houses only, or would you extend the same principle to buildings on glebes?—I would, except where they are held on lease by tenants.

1363. Where they are held on lease by tenants, would you make the obligations upon the tenants sufficient to relieve the obligations of the incumbent?—They are so under the Act at present.

1364. That is the point to which I wished to draw your attention. We had a very remarkable case the other day where property had been out on lease before an incumbent took possession of his benefice, and the lease terminated. The lessee's affairs being administered by the Court of Chancery, they declined to accept the report of the surveyor, which had been confirmed by the bishop, and the surveyor sent down by the Court of Chancery estimated the amount at about two-thirds less (100 *l.*, instead of 300 *l.*) than the bishop's surveyors. The consequence was, that the incumbent, without any fault of his own, had to bear the difference. What would be your Lordship's view as to such a case as that?—I think that there certainly should be a provision to meet such a case as that.

1365. Therefore the obligations of a tenant under a lease to which the incumbent is no party should be sufficient to discharge the incumbent from the obligation to repairs?—Certainly; for this additional reason: that no ecclesiastical lease can be granted by an incumbent without the consent of the bishop, and, I think, also of the patron; and therefore it would be unfair to make him pay for the failure of the lessee.

1366. Is your Lordship aware that in some parts of England (perhaps not in your diocese, but in the west of England) there are a number of cases of rectorial manors under which the whole of the glebe land has been granted out, either by

*Chairman*—continued.

copy or lease, by custom, and that has been stopped by recent legislation?—I think, if you give the clergyman a protection on the one hand, on the other hand you should never allow any lease to be made by an incumbent without proper consent; otherwise you might have the property of the benefice injured.

1367. Under a recent Act of Parliament, the power of granting leases by these rectorial manors has ceased, but the difficulty and the pressure comes upon the present incumbent when they fall in; do you think it desirable that there should be some provision to meet that?—I think that there certainly should be a provision to meet that, which is a clear case of hardship.

1368. I presume that you would propose to meet other cases of glebe buildings in the same way as in the case of residences, by taking a per-centage of the value of the house or glebe land?—I would; but of course a clergyman in that case, having to pay rent upon the farm buildings, would recoup himself by putting additional rent upon the tenant.

1369. There are a good many augmentations by Queen Anne's Bounty in the shape of small holdings of land with very inferior buildings; under the old law, those buildings passed from one incumbent to another without much being done, but under the existing law, surveyors have considered it their duty to have them reconstructed in a permanent way; and we have had evidence adduced before the Committee of cases where the cost of putting those buildings in repair exceeded the whole income that a man derived during his incumbency; have you known such cases?—I have known cases of hardship in connection with the repairing of farm buildings. It is a very difficult question, because the repair of farm buildings is often necessary in order to obtain a tenant; and the whole income of the benefice may turn upon having a tenant. There is one amendment which has been suggested, which I do not think desirable. It has been proposed that a clergyman should have the power to elect his own surveyor out of a limited number, subject to the approval of the rural dean. I think this objectionable, for these reasons: of course the clergyman puts the surveyor under an obligation by choosing him out of others, and therefore, naturally, the surveyor regards the clergyman who chooses him as his client more or less, and acts in his interest; this would be so obviously unfair to the other incumbent, that he would certainly claim the right to choose his surveyor also, and in that case you will have a double cost of two surveys; and if the surveyors do not agree, a third surveyor must be called in. I think there is a great risk, also, of the selection of inefficient surveyors in this way: that the rural dean, under the Act, has a right of complaint, and I think it would be very unfair to give the same man a right of complaint, and then a right of veto upon the person who has to inquire into his complaint.

1370. Supposing that your view is not to be adopted, but that another course is to be taken, you are objecting to the proposed mode of appointment?—Yes; my view would, of course, get rid of all those differences. Lastly, I think it would entail a loss of the uniform practice, in each diocese of having a surveyor thoroughly conversant with the working of the Act. Many clergymen have complained to me that they suffered

*Chairman*—continued.

fered extremely from having had very inefficient surveyors under the old Act. I think, for these reasons, that a much better plan would be for a surveyor to be chosen by all the clergy for a limited period, and liable to removal by the bishop also for inefficiency or misconduct, and also taking his chance of re-election if he does not give satisfaction. There are one or two other amendments that I should like to submit to the Committee which my experience suggests. I see no reason why the official costs of the surveyors should not be divided between the out-going and in-coming incumbents. At present they fall entirely upon the in-coming incumbent. The out-going man makes them necessary and the in-coming man pays for them, which is not fair; I think that they should be divided equally. I have mentioned that I do not think that the consent of the patron should be made essential to a loan. The third point, I think, is of great importance. I think that there is a defect in the Act, inasmuch as in cases of survey on request all subsequent proceedings are now compulsory, just as if it was on complaint. The consequence is, that many clergymen hesitate to call in the diocesan surveyor because they do not know what his report may be, and when once you put the machinery in motion you cannot stop it. I have been obliged to resort to a device in my diocese, which meets it. I have allowed clergymen to call in the diocesan surveyor "undiocesanally" (if I may use the expression), or unofficially, and take his survey, and then, if they think fit to go on, to send in his survey to me as an official survey, and I accept it; but that is merely a device, and I think that the proper course would be that, in cases of survey on request, subsequent proceedings should be optional, not with the bishop but with the clergyman; that is to say, the Act should run thus: that, "In case of survey on request, the bishop may at the request of the incumbent proceed" to do so and so. I wish to draw the attention of the Committee to the fact of the small per-centage of benefices that have been inspected under this Act on request, and I think that it is almost entirely owing to that defect in the Act. Then I think, as I have already stated, that there should be a much greater power of compelling the repair of chancels by lay rectors under the Act. I think that Queen Anne's Bounty Board should be empowered to pay the cost, in whole or in part, of all repairs of livings under 200 *l.* a a year; I think that they should lend for a longer period; probably for 50 years instead of 30 years, and at some less interest. Those are the only amendments which I have to suggest, and I beg leave to submit to the Committee this Return from my diocese, which sets out a good deal of statistical information as to the working of the Act in the diocese. (*The same was delivered in*, see *Appendix*).

1371. Your Lordship has expressed very strongly your opinion that the money for dilapidations should be paid into Queen Anne's Bounty; but we have had evidence here of the difficulty that clergymen experience in employing tradesmen in their own livings to do the dilapidations from not being able to get the money out again until the final certificate of the surveyor is given; it has been stated that if they adopt that course it necessitates a double amount of expenditure temporarily from their own



*Chairman*—continued.

pocket, or else they must employ some person who will wait until they get the final certificate; and that, consequently, increases the expense, and is open to this further objection: that instead of employing the carpenter and mason and plasterer of their own village, or small town, into whose good feelings they may wish to ingratiate themselves, they are obliged to take a mason and a carpenter and a plasterer from a distance; can you suggest some mode by which this money for dilapidations might be made applicable to actual repairs earlier?—I take it that under the Act at present Queen Anne's Bounty Board are bound to pay out instalments upon each certificate received from an architect of the completion of the works, and I think that that is a very great protection to the incumbent, because he is free from all pressure from the tradesmen in his neighbourhood to give them advances or to pay for work which is inefficiently done; because he says, "You must satisfy Queen Anne's Bounty Board; it is not me that you have to please." It prevents also the risk of a clergyman employing an insolvent tradesmen by mistake, which may involve the clergyman in serious difficulty. Therefore, I think, it is very much better that the clergyman should have Queen Anne's Bounty Board between him and the tradesman.

1372. The surveyor at the present moment specifies the work which has to be done and also assesses the value; supposing that the clergyman cannot get the work done by any contractor at the value assessed by the surveyor, what is his course then?—I think that his course should be to ascertain it within the month before he sends in his objection; that is often the principal ground of the objections made to me against surveyors' reports; the clergyman says, "I know it is insufficient, because I have asked persons to do it for the money and they cannot;" or sometimes he says, "I know it is too much, because I have asked persons to do it and they will do it for less." I think that that is one of the points in which the clergymen should guard his own interests.

1373. Supposing that the bishop confirms a report, and that the incumbent is assessed to pay a sum of 250 *l.*, which he pays in as a new incumbent into Queen Anne's Bounty, and gets it from his predecessor or not, as he can; have you considered that, under the Act, his obligation is at at end?—It is.

1374. And then it falls upon the surveyor to do it, does it not?—I was not aware that it fell upon the surveyor. I should have thought that it fell upon nobody, that it was a defect in the Act. It is a very good check upon the surveyor, if it does fall upon him.

1375. The 45th section absolves both the governors, the bishop, and the patron from any liability. The Act enables the bishop to enforce the payment of the money, does it not?—Yes.

1376. But that having been done, and the incumbent then saying, "This money which has been allotted to me is insufficient to do the repairs specified, therefore I shall do nothing," who is to put the 45th section in operation, unless the duty is cast upon the surveyor?—I do not see how the surveyor can be liable in law, unless the surveyor has made a contract with a tradesman.

1377. The inference is this: that the section says that the surveyor shall do the repairs, and

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at the end of the clause it absolves the patron, the governors of Queen Anne's Bounty, and the bishop from liability, but it does not absolve the surveyor?—Of course, if that is so, it is a very serious defect in the Act; but my attention has not been called to that point; it has never occurred in my diocese.

1378. You think that there should be some provision under the Act by which that section should be put in operation, unless your original suggestion of throwing the whole thing on Queen Anne's Bounty is adopted?—Certainly.

Mr. *Beresford Hope.*

1379. Would you not say, generally speaking, that the difficulty may have arisen from the fact of the Dilapidations Act having swept away at one blow an old customary system, and set up a Statute or a code instead, the consequence of which was that all parties were very much surprised to find themselves within the four corners of an Act of Parliament, with no discretion of any sort left, and bound to scramble out of a pure legal obligation all round?—Yes; I think the effect of bringing in a stricter and better system upon an old and lax system must always entail the inconveniences that you speak of. The suffering of the incumbent comes from this, that he came in under a lax system, and he is going out under a strict system.

1380. And you would also say the suffering of the bishop?—Very severe suffering indeed: sometimes, I assure you that it is extremely painful.

1381. In the very points where he ought to have discretion he finds himself under a narrow and stringent Statute?—I think that the bishop has not much more, but a little more discretion under the Act than is generally supposed.

1382. You have just given us reasons which are very good, as far as they go, against the surveyorship being made a qualification instead of an office; but is there not another side to that; that if there were more surveyors, and a greater choice among the surveyors, they would be less likely to take too stringent a view of their duties?—I should not like to speak disrespectfully of the surveyors, but I hardly know any other word to use than that they would vie with one another for custom, and that each would be tempted to reduce his charges. I omitted to state (which is important) that I think in every case in which a clergyman objects to a survey, he should be allowed to choose his own surveyor, because there the surveyor is legitimately acting as the representative of the clergyman.

1383. That would meet one great grievance?—Quite so.

1384. Is not the way in which the thing works hardly now possibly this: that the surveyor is an officer; he is called in to make a report; that report is identical with what in his other character of an architect he is apt to make with a view, of course, to his own legimate professional income; an architect, when he reports to you or any other client, reports all that he thinks ought to be done, and he takes the chance of the thing being done or not done. In this case he is called in as a surveyor; of course he is anxious to turn out a very workmanlike report; he is anxious to put the house in the best condition; he considers (as one of the leading surveyors under this Act told me) that he is bound to put the house in the condition of a new house; and

Mr. *Beresford Hope*—continued.

accordingly he finds himself in the most luxurious position of a man of taste who improves his neighbour's property at his neighbour's expense. Then, unfortunately, the Act comes in with regulations which seem to make it obligatory upon bishops who are not so strong-minded and so energetic as we know your Lordship to be, and then the unfortunate incumbent, perhaps a very poor man, has to pay for the taste of this æsthetic surveyor?—I think that the difficulty that the honourable Member raises is a possible one at any rate, and that it would be met by a proper definition of dilapidations, and that the definition which is contained in the Act for the Irish dilapidations known as Napier's Act, would go very near meeting your objection; it is not that the incumbent shall be bound to give a new house to his successor, which I think is monstrous; but that he should be bound to put it in such staunch and tenantable order and condition as that the same may be a fit and proper residence for the said ecclesiastical person and his successors. That or some other definition which would limit the fancies of architects I think might be adopted.

1385. For instance, a case came before us of an incumbent who says that a surveyor came in and found that the door staples were long and old fashioned, and ordered them to be replaced by new-fashioned short staples; do you think that that would be rather exceeding his powers?—Decidedly; but if you elected surveyors for five years, a surveyor who did that once or twice would find himself out of his office at the end of the five years. I think that if the power of dismissing the surveyor were given to the clergy that would be checked.

1386. At the same time, would you not elect more surveyors for a diocese than at present; you would not leave it to the discretion of a meeting of the clergy or of the rural deans to settle how many there should be for each diocese?—I left it to the decision of my 45 rural deans, two chancellors and archdeacons.

1387. If you look out of that window you see the Diocese of Winchester, which has one surveyor from the hospital there to the Isle of Wight and the Isle of Guernsey; do you consider that that is a sufficient exercise of discretion?—Certainly not; I think that there ought to be three surveyors, one for each archdeaconry.

1388. Your Lordship was not aware that all the clergy of the Diocese of Winchester, are (as I say, from Lambeth to the Channel Islands) dependent upon the time and convenience of one man?—I think that is one of the mistakes which arose from the inexperience of all parties in the working of the Act, and which ought to be remedied in each diocese accordingly.

1389. You would introduce some such limitation as that there should be at least one surveyor for each archdeaconry?—Certainly.

1390. It has come out in evidence before this Committee that the gentlemen who have been elected surveyors have been picked out of different professions: some are architects and some are land agents; do you think that desirable?—No, I think that there is a suggestion made upon that point by Mr. Bruton, who has written a work on the Diapidations Act. It is that the same limitation should be adopted as regards the election of surveyors that now exists with respect to divisional surveyors in the metropolis. It is required that candidates for the appointment shall possess a certificate

Mr. *Beresford Hope*—continued.

certificate from the Royal Institute of British Architects, and that is only given to those who pass an examination specially designed to test their fitness for the office. Some such qualification as that I think there ought to be.

1391. On the other hand, the Committee have it in evidence before them that the miscellaneous work that is thrown on the surveyors may in some cases be better discharged by land agents than even by architects; would you, therefore, have land agent surveyors to deal with glebe farm buildings as well as architect surveyors to deal with parsonages?—I would not; but I think that that difficulty would be met in the way in which I meet it; that is to say, that where the case seems to be specially the business of a land surveyor, I employ a land surveyor in cases of objection to make a second survey.

1392. Then, in short, you take all that work out of the hands of the surveyor?—I do not take all the work out of the surveyor's hands, because I think he will very soon learn his business if he is a man of any intelligence; but I give the correction of that part of his report which specially relates to land surveying to a man who specially knows land surveying.

1393. Would you in a new Act define the bishop's power of correcting more precisely than it stands at present?—I think it would be a course that would be open to objection. You would have the clergy, perhaps, saying, "If you give the bishop the power of cutting down the surveyor's report, you give him also the power of swelling it," and they might say that that is a dangerous power to give to a bishop.

1394. If you do not give the bishop or somebody that power, you are still rather at the mercy of the very high artistic and professional ideas of the surveyor, are you not?—Not if you give the clergyman a whole month in which to raise objections.

1395. Is a month time enough?—I see no objection to enlarging it a little.

1396. Does your lordship's experience of the country clergy lead you to think that with all their merits they are sufficiently practical men, and know enough of buildings and architecture, to be able, single-handed, to cope with the report of a very eminent architect and surveyor, without having to get friendly professional advice to assist them?—In many cases that I have known the clergy have got that friendly professional advice, and have acted upon it.

1397. Is not the poorer country clergyman really the sufferer?—He is not bound to go very deeply and professionally into the matter; he makes his objection to the bishop. Most frequently the objections I get are not that they object to this and that repair, but that they think the whole cost excessive, and I am enabled very frequently to deal with that without putting them to the cost of a second survey.

1398. And you think the Act gives you sufficient power to do so?—I think it does.

1399. You do not think that it is necessary to define your discretionary power more clearly?—I should explain the mode in which I have acted in those cases. The incumbent makes a general objection on the ground of excessive cost, and he says, "I think these repairs are needed, but the surveyor charges too much for them." I have been in the habit of saying, "Well, if you can get responsible tradesmen to contract (not to estimate) for the completion of these works for a lesser sum, I shall be willing to make the award for a lesser sum, provided I am satisfied of the respectability and solvency of the tradesman."

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1400. The Act of Parliament is rather ambiguous on the point of whether the surveyor may afterwards be employed on the usual terms as architect; what is your opinion, either as to the meaning of the Act or as to the policy of that employment?—A legal opinion has been taken upon it to the effect that the surveyor may act in the capacity of architect but not in the capacity of contractor, and that has been acted on to a considerable extent in my diocese.

1401. That follows the usual professional etiquette?—Yes.

1402. And you think it desirable that he should have that power?—I think so. It is a great check upon extravagant estimates, if a man has to carry them out afterwards as the architect.

1403. Your proposed scheme, I gather, is a system of general insurance to be carried out through the Queen Anne's Bounty office?—I do not know that I should call it general insurance; I should call it an annual rent for glebe houses.

1404. An annual rent, obligatory through the whole incumbency?—Yes.

1405. That comes to something very like an insurance, I think?—With this difference, that in the case of an insurance, the payment of the money and the examination of the house would only take place upon the death of the person insuring; whereas on my system, you would have only a periodical, say quinquennial, survey of the houses.

1406. Is the rent to be re-adjusted for each occupancy, or for life?—I should say not for the occupancy.

1407. Would you have to take the age of the contracting incumbent into consideration, as you would in a life insurance?—No; I should say that the surveyor would examine the house, and say, "For a reasonable period, say 20 or 30 years hence, this house will only require so much to repair it, and an annual charge of so much upon the house will be sufficient to secure that repair."

1408. Then, virtually, a man's age will come in, though not formally?—I think the age of the house will come in more than the age of the man.

1409. If a man is 25 or 55, the question must be very different; the surveyor cannot enter into that; but we know very well that a house will probably be much more worn out during the incumbency of a man of 25 than of a man of 55, so that you really bring that in?—I do not see why you need bring it in, because on my plan he is free from all claim for dilapidations on the termination of his occupancy; and, therefore, it is a matter of indifference to him what is done with the house when he ceases to occupy it, provided he has paid his annual rent.

1410. A young clergyman goes into a very good, serviceable, well-repaired house, say at the age of 25, probably the house will last pretty well till he is 50, and then it will begin to get cranky, and then if he goes on to 75, it will get more cranky, so that the surveyor will take that into consideration; whereas if the incumbent, at the age of 55, had come into a good house, the

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chances are that during his occupancy, or his lifetime, it would not require much repair?—It strikes me still that the surveyor will have regard solely to the age and condition of the house. He would say: "For 20 or 30 years this house is in very tolerable repair, and probably will not want much repair till the end of that time; and, therefore, I assess the annual rent of this house to keep it in repair at so much." Whether the incumbent lives or does not live for that 30 years seems to me a matter immaterial as regards the survey and valuation of the rent, though of course it is a material matter to the clergyman.

1411. According to that explanation it will work hardly against a comparatively aged incumbent, because he will have to pay for prospective repairs which really will not fall in till the time of his natural life has in all probability expired?—There is no system of dilapidations that you can devise that can make things equal between old men and young ones.

*Chairman.*

1412. Supposing that a manufacturing firm set aside an annual sum to meet the wear and tear of their manufacturing machinery, they would put 1 per cent. upon a new machine which was brought in to-day, and 10 per cent. upon a machine that has been working for a certain length of time?—Precisely.

Mr. *Beresford Hope.*

1413. You would have a re-valuation at the time of the avoidance of the living?—I would either have it at the time of the avoidance of the living, or, which I think would be much better, at the termination of a fixed long period, 25 or 30 years.

1414. That meets my objection; I did not know that you proposed a second alternative. But would you make it obligatory upon the new incumbent when he came in to take up the unexpired portion of that time?—I would, because it is a charge not upon him, properly speaking, but upon the benefice which he takes with its liabilities.

1415. I did not understand that second alternative. I thought you meant that there was to be a re-assessment and a fresh commencement of all things on every new incumbency?—Certainly not; that would be bringing back all the uncertainty of the old system.

1416. It would be a system of assurance or arrangement for a fixed term of years, of which Queen Anne's Bounty Board should be the bankers and the ultimate arbitrators?—Exactly so.

1417. And that the surveyor should be appointed by Queen Anne's Bounty Board?—I confess I should still, if the clergy wished it, allow them to elect their surveyors; but they would have no object, or very little object, in doing so under my system.

1418. But in that case you would give very considerable power to the central authority; would you limit it in any way; would you, for instance, allow the central authority to declare a house worn out, and to compel a rebuilding?—I think that in that case there ought to be certain powers of appeal. I have not yet considered to what extent they should go, but I think that probably the patron should be allowed some right of appeal, and possibly the bishop.

Mr. *Beresford Hope*—continued.

1419. Would you give to a diocesan or archidiaconal conference or synod, or any similarly constituted body, any power of intervening?—No; I should be very sorry if I were an incumbent to have the rent of my house, or any other payment, settled by a majority of a conference, or even of the House of Commons.

1420. I mean as regards the question of the building or re-building of houses?—I do not thiuk that it is a question which would come well before a diocesan conference; I think that it would come better before some responsible authority.

1421. As to chancels, I understand that you would deal with them on some separate system?—As regards the chancels now possessed by lay rectors, I certainly would deal with them much more stringently than they are now dealt with; I would give the same power of complaint, and the same or some power of enforcing repairs which now exist as regards clerical rectors.

1422. But when the living was a rectory, you would put the chancel on the same footing as the glebe house?—I would, unless you repeal altogether the old-fashioned obligation to keep the chancel in repair. I do not see, in principle, why a man is more bound to keep the chancel in repair than he is bound to keep the nave in repair; it seems to me rather an anomaly. But if you have it at all, I think the obligation should be just as stringent, and more stringent upon the lay rector than upon the clerical rector, because the clerical rector does something for his money, and the lay rector does nothing for his money.

Mr. *Wait.*

1423. I wish to ask your Lordship one question as to the policy of the 16th section, which states that the incumbent objecting to a report, if a second survey is ordered, shall pay the expense of such survey whether the objection is well or ill grounded. It has been stated before this Committee that a very great grievance has existed, and I am bound to say that it seems to me that it ought to follow the usual rule in which the costs abide the event; so that if the objection is well grounded, the objector should not pay the costs of the second survey; would not that appear to be a sound principle?—I think that your principle is perfectly sound that the costs should follow the event; but there would be the practical difficulty that in some cases the second survey would be considered sound in some of its points and unsound in others; that is to say, the second survey might not be entirely in favour of either one man or the other, and there would then be considerable difficulty in adjusting the relative portions of payment to both parties.

1424. On the whole, you would prefer that the clause should remain in its present condition?—I do not think there is a greater hardship under the present clause than there was under the old law; because, under the old law, if a man objected to a survey, the other party had his surveyor, and then they called in a third surveyor; I think that the costs under the old system were greater than under the present. Your principle appears to me to be perfectly sound if it could be given practical effect to, which I doubt.

Mr. *Birley.*

1425. Did I rightly understand your Lordship to recommend that Queen Anne's Bounty Board should have the charge of the repairs or the reconstruction

Mr. *Birley*—continued.

construction of all the parsonages throughout England and Wales?—Provided that they receive an annual payment for the same.

1426. Do you think that they would be competent to undertake or to carry out satisfactorily such an enormous work as that would be?—I do not see why they should not.

1427. There is nothing analogous to it in our system, is there?—The thing is done, though of course upon a small scale at this moment in the Irish Disestablished Church, where the Irish representative body are possessors of all the glebe houses, and they build, insure, and repair, and receive an annual rent.

Mr. *Beresford Hope.*

1428. Might there not be a good deal of jealousy in supposed forfeiture of, or detriment to, the present freehold position of the clergy in regard to the houses?—I do not think that it would necessarily affect the freehold position of the clergyman. It is simply that the Board would be bound to repair his house for him; but it would not deprive him of his freehold right in that house.

Mr. *Birley.*

1429. I understood your Lordship to say that you would recommend the clergy to be made, in fact, as they are now, in theory, the tenants of the church; therefore, they would cease then to be freehold?—Of course an illustration of that kind cannot run quite on all fours; but the position is as nearly analogous as possible to that of a tenant for life.

1430. Otherwise I should not conceive that the fact of Queen Anne's Bounty Board undertaking the repairs would make them the owners of the property; you would not propose to vest the property in Queen Anne's Bounty Board?—Certainly not; it would be impossible.

1431. Have you made any estimate of what the probable annual charge upon the benefices would be, as regards your own diocese, for instance?—I have not; and for this reason, that my only basis for that calculation would be the average amounts expended during the operation of this Act. But then, I take it, that those average amounts are very much greater than they will ever be again, in consequence of the ruinous state of many of the houses under the old system; and, therefore, I have no sufficient basis upon which to make a calculation.

1432. Do you know how many parsonages have been vacated in your diocese annually?—The number of orders to survey in my diocese under the Act has been 184, out of about 580 benefices, every one of which, however, has not a house attached to it.

1433. Then one-third of the parsonage houses in your diocese have been under order for survey in the course of four and a-half years?—About that proportion I should say; and of those 180 surveys, 138 have been upon vacancy.

1434. Would you propose that the annual charge should be calculated upon the value of the house, or upon the value of the living?—That is a very large question, but it is one which I have considered. If you put it *ad valorem* upon the benefice, then of course you are making the richer benefices, to a certain extent, pay for the smaller. I myself think that that is a step, within certain limits, towards that redistribution of the income of the Church which I do not think is altogether undesirable, and which is the principle carried out in the payments to Queen Anne's Bounty of first fruits and tenths; but I can imagine very serious objections being made to that by patrons of livings, for instance, and others; and, therefore, I think that you would have to fall upon the other principle of a valuation of the house, and a calculation of the probable cost of the repairs of that house, say for 25 years to come.

Mr. *Birley*—continued.

1435. The honourable Member for the University of Cambridge asked you several questions about the rate at which the annual charge would be assessed in proportion to the age of the incumbent, but I think I rightly understood you to say that you did not conceive that that would have anything to do with the question?—I confess that I am unable to see how the age of the incumbent comes into the calculation.

1436. I assume that you would make a charge, and that charge would continue?—I would make a charge, say for 25 years, and that would continue till the end of those 25 years, no matter who came in or went out.

1437. And then there might, or might not be, a new assessment?—There might or might not be a new assessment.

1438. Pretty much upon the principle of rating in counties?—Precisely.

Mr. *Beresford Hope.*

1439. The house must be in fairly good repair before this system could come in, must it not?—Precisely; and therefore I propose to make it entirely prospective, and to leave existing incumbents to come under it if they think fit.

Mr. *Gregory.*

1440. Your Lordship spoke of the liability of lay impropriators; I do not know whether you contemplate any extension of that liability?—In what direction?

1441. By rendering them liable in any way for the house or building of the living; your Lordship, of course, contemplates their liability for the chancel?—Yes.

1442. And that further provision should be made for enforcing that liability?—Yes.

1443. I do not quite understand whether your Lordship contemplates any extension of that liability?—Of course I should be exceedingly glad to see it carried to the extent of restoring the whole of the impropriation to the Church, but I do not know that it would come entirely within the purview of this Act.

1444. It is no part of your Lordship's suggestion, as I understand?—No, it is not; it is part of my wishes.

1445. With respect to the law on dilapidations, your Lordship is, perhaps, aware that the extent to which an incumbent is liable for dilapidations has been laid down in a case which was decided some years ago, and which was given in Burn's Ecclesiastical Law?—I am not aware of that.

1446. I will refer your Lordship to the definition given there in the case of Wise *v.* Metcalfe. The decision there was that "the incumbent to a living is bound to keep the parsonage house and chancel in good and substantial repair, restoring and rebuilding when necessary, according to the original form, without addition or modern improvement; but he is not bound to supply or maintain anything in the nature of ornament, such

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such as painting, unless that be necessary to preserve exposed timber from decay, and whitewashing and papering." As I understand, the law as laid down there meets your Lordship's views as to what dilapidations should be?—Entirely.

1447. I think that you object to the veto of the patron to the borrowing power under the present Act?—I do.

1448. And you contemplate an alteration in that respect?—Yes.

1449. Do you contemplate that the money should be advanced altogether, without the consent of the patron?—Not without giving him full power of making his objection; I should give him an ample power of objecting, but not his present power of absolute veto.

1450. You would give him a *locus standi*?—Distinctly, because he is a party interested in the case.

Mr. *Freshfield.*

1451. If I understand your Lordship's scheme aright, you would entirely supersede in effect the scheme of this Act of Parliament?—I would.

1452. If I correctly understand your Lordship, you would place the repair of buildings under this Act entirely in the hands of Queen Anne's Bounty Board?—Either of Queen Anne's Bounty Board, or of a Diocesan Dilapidations Board in each diocese.

1453. Dealing with it, as it is at present, on the vacancy of any living, of course the report of a surveyor would have to be sent to Queen Anne's Bounty Board, and they would have to execute the repairs which were required to be done?—Yes.

1454. The result would, of course, be a very large annual charge upon Queen Anne's Bounty Board; you propose that they should recoup themselves by a charge upon the livings?—Yes.

1455. That of course would be annual; in the meantime, of course there would be a very large outlay by Queen Anne's Bounty Board; has your Lordship considered at all what that charge would amount to, and whether the funds of Queen Anne's Bounty Board extend to that capital sum?—I have not considered the question carefully, but I believe that Queen Anne's Bounty Board possess a very considerable amount of property in the funds; and I think that it is also to be borne in mind that this charge for all these glebe houses would not fall all at once upon Queen Anne's Bounty Board, but in gradual succession according to vacancies, and so on.

1456. Still your Lordship sees that there must be a very large capital sum required to be found, as the valuations are required to be made?—Yes.

1457. Is there any means of forming a notion of what that capital sum would be?—The only basis of calculation as yet existing, as I have said, is the results of the Act during the last four and a half years, which would give an average of dilapidations during that time; but, as I have already stated, that is an unreliable basis, because those expenditures are very much greater than they will ever be again. But I should think that within five years there will be a very reliable basis of calculation as regards all those houses that have come under the operation of the Act.

1458. The capital would not be recouped, I presume, for at least 25 years upon the principle which you have laid down?—No.

Mr. *Freshfield*—continued.

1459. But your Lordship thinks that the funds in the meantime would be forthcoming if Queen Anne's Bounty Board were employed to undertake that duty?—I think so. Possibly it might be necessary for them to do as the Ecclesiastical Commissioners did when they were starting, in order to have a sufficient fund in hand; they obtained from Parliament powers of borrowing.

1460. Queen Anne's Bounty Board, I believe, is a very promiscuous institution, is it not?—Very much so.

1461. I suppose that it would be necessary to have a permanent committee, or some such body as that?—Yes; I should say some such body as the Estates Committee of the Ecclesiastical Commissioners.

Mr. *Walter.*

1462. I was going to ask whether your Lordship has considered the ability of Queen Anne's Bounty Board to keep all the small buildings in repair; I understand that you are not prepared to state whether Queen Anne's Bounty Board actually has the ability to discharge that duty?—I am not; and I should wish to add that the suggestion which I made had rather reference to the present Act being combined than to my plan being adopted. I think that Queen Anne's Bounty Board would probably not have funds enough to do both.

1463. Am I right in understanding that it was not part of your Lordship's plan to tax the rich livings by payment into Queen Anne's Bounty towards the expense of repairing and rebuilding the houses in small livings, but merely to tax them to the amount that would be sufficient for their own maintenance?—Yes.

1464. So that the cost, in the case of a smaller living, should be defrayed as an act of pure bounty out of the funds of that body?—As far as possible.

1465. Should you apply that principle to the case of new parsonages built for small livings and district churches, the cost of which is partly defrayed at present by the Church Commissioners and partly raised by private subscriptions, or how would you deal with those cases?—I do not think that those cases could be dealt with in any other way but in the way of benevolence from Queen Anne's Bounty Board. I think you must make a general system applicable to the whole, and then give the relief and benevolence wherever you can give it.

1466. Your Lordship referred to cases which you have known of contracts of a simoniacal character between patrons and incumbents whom they had appointed, to the effect that their presentees should not claim dilapidations from their predecessors; you would consider, I presume, that that would be a case of the in-coming incumbent contracting himself out of the law of dilapidations?—Yes.

1467. Have any cases ever come within your Lordship's knowledge of the converse of that state of things, where the in-coming incumbent has contracted with the patron that he should be presented and exonerated from all dilapidations?—No, I have not known that.

1468. Should you consider that equally objectionable and equally simoniacal?—I should not, because in that case the patron is not receiving anything from the clergyman for the presentation; on the contrary, the patron is presumably conferring

Mr. *Walter*—continued.

conferring a fresh gift upon the church by repairing the house himself.

1469. But inasmuch as the nature of that contract is that the presentee shall be exonerated by the patron from the cost of dilapidations to which he would otherwise be liable, upon whom does your Lordship suppose that that cost would in future fall?—Under the present Act, of course, no such bargain would be made, because the Act secures that the cost of that payment would now fall upon the clergyman, who therefore would not be so unwise as to make that bargain. But under the old Act, it does not appear to me that it would have been simony, if I understand your question, because, in the one case, the patron is getting an undue consideration from the clergyman, a simoniacal consideration for putting him into the living. It is the reverse in the case which you mention. The clergyman goes in and the patron then takes the risk of the dilapidations.

1470. Still it is a consideration; I do not know whether by law clergymen are capable of being guilty of simony?—Yes, they may be; but I am not quite prepared at this moment to say whether it would or would not be simony. The case has never occurred to me before; I have never heard of it.

1471. With regard to the question of the repair of the farm buildings on glebes, and so forth, has it ever occurred to your Lordship that that difficulty might be got over by greater facilities being given for the sale of glebes, the money to be applied to the benefit of the living?—I confess that I entertain rather a strong opinion against the sale of glebes and the turning of land into money, for two reasons: in the first place, the value of land tends to rise, and the value of money tends to fall, so that an exchange of land for money would tend to the ultimate impoverishment of the living. In the next place, I do not quite like putting all the eggs of the church into one basket, which may be carried off some of these days by somebody.

1472. Your Lordship is well aware of the fact that many of the clergy find the possession of the glebes, with the obligations attached to them of obtaining tenants, and so forth, a considerable burden?—I am quite aware of it.

1473. And also that when they undertake to manage it themselves they are not always successful?—I quite feel the weight of that objection.

1474. With regard to the working of the present Act?—I should be glad to know what the practice is in the case where the money due to the in-coming incumbent for dilapidations is not immediately forthcoming. I see by the 47th section of the Act, that the repairs are to be executed within 18 months; I should like to know what are the several stages of the process by which this Act is put into operation. Does the new incumbent, when he comes in, pay the amount assessed by the surveyor for the dilapidations to the Governors of Queen Anne's Bounty.

1475. But if he does not receive it, then he must state that he has not received it, and apply to the Governors of Queen Anne's Bounty Board for a loan to recoup him. He must show that he has used all due diligence to recover the amount.

1476. Then he is not expected to execute the repairs at once out of his own pocket, but to apply for a loan out of Queen Anne's Bounty?—Yes, in case of the insolvency of the outgoing incumbent.

Mr. *Walter*—continued.

Mr. *Monk.*

1477. May I take it that your Lordship does not propose, under your suggested scheme, that the funds of Queen Anne's Bounty should be in any way diverted from their present objects?—I can hardly answer that without drawing some distinction. It appears to me that the real object of Queen Anne's Bounty is the relief of poor livings, and that, therefore, the application of their funds in the direction which I propose, would be an application in the direction of the objects of Queen Anne's Bounty.

1478. Your Lordship is doubtless aware that great complaints are made by the clergy as to the mode of assessment of livings both for first fruits and tenths?—Yes, and I think very justly in some cases.

1479. Does your Lordship think that before this scheme is adopted by means of legislation, the present mode of assessment should be altered?—I think that the present mode of assessment is very much in need of alteration.

1480. Have not both Houses of Convocation suggested that all livings above a certain value should be assessed upon a different principle from the present assessment?—Both Houses of Convocation have made a report somewhat in that direction. There was a difference of opinion between the upper and the lower house, if I remember rightly, as to the exact point at which you would draw the line between rich and poor livings; but both houses agreed in recommending an alteration, and in the direction of which you speak.

1481. Does your Lordship know whether any legislation is contemplated on that subject?—I have not heard of any legislation being immediately contemplated.

1482. Does your Lordship think that there should be an uniform scale of fees for all the dioceses?—I should say not; I should think that the circumstances of dioceses differ, and also the amount of work for surveyors.

1483. May I draw your Lordship's attention to the Act of 1872, enabling the Archbishop of Canterbury, the Lord Chancellor, the Archbishop of York, and the two vicars general to review the fees. Do you know why that clause has not been acted upon?—I am hardly in a position to speak for the Archbishop of Canterbury, but my own view is that it was not acted upon because it was thought, on the whole, more desirable not to do so, and better to leave the arrangement of fees in each diocese under the rural deans who knew the local circumstances.

1484. The power under that Act, I think, has expired?—It has.

1485. Have any complaints come before your Lordship as to the amount of fees and costs charged by the surveyors?—No complaints have reached me in my diocese of excessive official charges.

1486. Nor so far as the registrar and secretary are concerned?—No; one occasionally sees an angry letter in the newspaper, but no official complaint has ever been made to me of excessive fees.

1487. So far as your Lordship's experience goes, the charges made under the scale authorised by the rural deans is a fair one?—I think that in my diocese it is distinctly so.

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Mr. *Monk*—continued.

1488. I think your Lordship said that you thought it desirable that there should be an appeal from the bishop; to whom would you propose that that appeal should lie?—I think that is a difficult question. Many persons recommend that it should lie to some court of law, which has very obvious advantages; but, of course, it has the disadvantage that it involves a lawsuit, with all its costs. I think that if there could be some official referee appointed, say by Queen Anne's Bounty Board, some surveyor of eminence to whom an appeal should lie from all decisions respecting dilapidations, it might meet the difficulties of the case. The great objection which I have to appeals is, that they are so costly for the clergy.

1489. Does your Lordship think it desirable that the bishops should be relieved from the great labour which devolves upon them under this Act, and that the archdeacons should have the duty thrown upon them?—Personally, I should be very glad, of course, to be relieved of what is a very onerous and irksome duty; but I do not think that it would be so desirable.

1490. And, perhaps, not so satisfactory to the clergy generally?—I am, perhaps, scarcely a fair judge upon that point, but I think it would not be; and there is another reason, that the archdeacons being a good deal more mixed up with the clergy in their own archdeaconries, their decision would not come with, perhaps, the same weight, and from the same distance, as the bishop's.

Mr. *Beresford Hope.*

1491. Do you see your way to this new line of business on the part of Queen Anne's Bounty Board without crippling its present money gifts, and so on?—I think that the new line of business would be the best way in which Queen Anne's Bounty Board could give money.

1492. You would be prepared then to retrench its present gifts, in order to give fair play to this new system?—To a certain extent, I would.

1493. As you have yourself just now pointed out, Queen Anne's Bounty Board is an institution for the benefit of small livings; you would make it an institution for the benefit of livings, large and small; have you no fear that that might be attacked as a perversion of the original meaning of Queen Anne's Bounty?—I do not see how, on my principle, it would be any benefit to large livings. They would pay their proper and due rent for the repair of their houses, and have them repaired as no matter of favour whatever. The only favour would be the remission of charges, which I only propose should be made in the case of small livings.

1494. I understand that you propose to work your two systems simultaneously; to make Queen Anne's Bounty a general insurance office for all the livings in England; but also allowing it to remit surveyor's fees, and other incidental expenses, in the case of those which are poor?—Yes.

1495. I did not quite understand whether your two suggestions were simultaneous or alternative?—They are not alternative, but probably they could not both be fully and completely carried out.

1496. Still they are portions of the same scheme?—They are, certainly.

*Chairman.*

1497. I gathered, both from the questions of the honourable Member for the University of Cambridge, and from your replies, that you would have a fair calculation made for a period of 25 years of what would be an annual sum to meet the general cost of repairs for each house?—I would.

1498. And that, in the case of small livings, Queen Anne's Bounty Board should have a power to pay the cost for them?—Exactly so.

1499. That this fund should be paid into Queen Anne's Bounty as a bank; and that from that common fund the repairs, when necessary, should be drawn for?—Yes.

1500. Leaving it to the authorities of the diocese to carry out the work, but having Queen Anne's Bounty at the back to go to for the money?—Exactly.

1501. In reply to the honourable Member for Berkshire, with reference to the existing Act, I think your Lordship said that where the new incumbent had not recovered the money, he would go to Queen Anne's Bounty; but under Section 40 of this Act there is a positive obligation for him to pay the whole sum in, whether he gets anything from Queen Anne's Bounty or not?—Yes.

1502. Queen Anne's Bounty may, if they think fit, lend the money?—Yes.

1503. But, in a variety of cases, they decline to do that on the ground of the security being insufficient, and for other reasons?—Yes.

1504. But where they do not lend it, the amount must, under Section 40, be paid in by the new incumbent within six months, unless the bishop gives an extension of time, and that extension of time cannot be longer than 12 months?—It is so.

Mr. *Walter.*

1505. The repairs must be executed within 18 months, but Queen Anne's Bounty Board are the paymasters for the repairs, and they pay by instalments as the work is certified, do they not?—Yes. I see by Clause 37 that the new incumbent has to pay over the dilapidation money to the governors as he receives it from his predecessor.

1506. Then it strikes me that he may be paying the money twice over, although he would, of course, recover it again; but he is liable in the first instance to pay his own money into the hands of the Governors of Queen Anne's Bounty; and then, if at a subsequent time he recovers the money from his predecessor, perhaps after litigation, he has to pay that over to Queen Anne's Bounty Board?—Yes, I have known this case occur which exactly illustrates what the honourable Member says; I have known a clergyman hastily expend a certain sum of money upon the repair of his benefice, which was very properly done, but he neglected to pay the sum of money into Queen Anne's Bounty; and I have been obliged in such cases to require a clergyman, as a formal compliance with the letter of the Act, to pay in the sum, and then to receive it back the next day by a cheque; in such cases he has immediately received the money back.

*Chairman.*

1507. The honourable Member for Berkshire asked you some questions relative to simoniacal arrangements with a presentee, and I think his question

*Chairman*—continued.

question went to this extent: that where the presentee had contracted with the patron that on his vacating his incumbency he should not be called upon for repairs, that would amount to simony, just as much as the arrangement that the presentee was not to call upon the late incumbent for repairs?—I think so; I understood the honourable Member to refer to incumbents coming in and not to incumbents going out.

1508. It is upon coming in; but the contract is made between him and the patron that he would accept the living on condition that when he went out he should be under no liability?—That would be at any rate an arrangement distinctly to the injury of the benefice, and to the benefit of either the patron or the incumbent as the case might be.

1509. With reference to the question of appeal, you thought that an appeal might increase the costs; but supposing that the chairman of petty sessions, and men of that class, who have to deal with rating valuations as part of their duties, were called in with the rural dean, do you think that that would be a tribunal that would be inexpensive as an appeal from the bishop's decision?—I should not have the slightest objection to it; I think that it might work very well.

*Chairman*—continued.

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1510. He would be in the immediate locality where he would have a local knowledge as well as a quasi-judicial knowledge, and from having dealt with similar classes of cases in the ordinary business connected with the county?—I think that any mode of appeal which would not be more costly to the clergy than the existing one would be very desirable, as far as the bishops were concerned.

1511. Such men would have sufficient knowledge, both of facts and law, to be able to decide any points that might arise, would they not?—I should be very glad if such an appeal were given.

Mr. *Birley.*

1512. Do you think that an appeal to the judge of the county court would be a good mode of appeal?—Yes, it would be a very good one, I should say; but I think there would be less cost in going before a magistrate than going before a county court judge; I still think that there might possibly be accusations of partiality against a magistrate who might be locally connected with this or that clergyman, but of course all judges are subject to accusations of partiality; I do not personally see the least objection to it.

The Rev. ADOLPHUS WALLER, called in; and Examined.

*Chairman.*

Rev. *A. Waller.*

1513. You are the Vicar of Hunstanton, in Norfolk, are you not?—Yes.

1514. You have considered the question of ecclesiastical dilapidations a good deal, have you not?—I have.

1515. You have heard the general complaints of some of the clergy with reference to the operation of the Act, I think?—Yes.

1516. I believe that in consequence of those complaints you have published a pamphlet with certain suggestions, by which the present mode of proceeding might be amended?—I have.

1517. The general complaints that you wish to remedy are, I think, to make the matter cheaper, and to give the clergy some voice in the matter; and you also suggest that the archdeacons, or rural deans, or both, should be the mediators instead of the bishops, and that some plan should be adopted by which the widows of late incumbents should be dealt with in a more reasonable way than they are at present?—I propose that the benefice and not the incumbent should be liable.

1518. That is to say that the larger repairs, at all events, you would throw upon the benefice instead of upon the individual?—Yes, I would throw all the repairs upon the benefice, and nothing at all upon the individual.

1519. Supposing that a person was exceedingly careless and neglectful, and neither cleared the roofs nor kept out the wet, or anything of that sort, you would not relieve him altogether from actual wilful waste, would you?—No; that would modify the time in which he would be obliged to pay it. The money that would be advanced to him would then have to be paid, say, during a term of years, which would be fixed according to the amount of neglect that the surveyor reported.

*Chairman*—continued.

1520. At the present moment, the general law of dilapidations throughout the kingdom is, that a man if he wilfully neglects things, or does wilful wrong, or neglects to insure, so that the house is burnt down, is personally liable?—Yes, he would be liable; but the money would have to be found for him if he could not pay it.

1521. What is your reason for suggesting that a man who wilfully neglects or destroys places should have money found for him?—According to the system which I propose, the money that would have to be found would then have to be repaid to Queen Anne's Bounty, and if there was great neglect found, he would have to pay in three, four, five or six years according to the amount of neglect. I am obliged to take it altogether, because I should propose there being at once a survey of all the benefices in England.

1522. How long would that take?—I think that it might take, speaking approximately, perhaps three years.

1523. How many surveyors would you propose to appoint for it?—I think that a surveyor should be appointed for each rural deanery, and probably four or five rural deaneries would all elect the same person.

1524. When these reports have been made, where should they go to?—They would then be sent to the archdeacon.

1525. Would you grant to the clergy a power of appeal against that report?—Yes.

1526. Who would you propose should decide upon that appeal; would you suggest a commission, or the archdeacon, or the bishop?—I think that there should be a commission appointed to survey in every rural deanery, but an appeal be given to the bishop.

1527. I see that in your sixth suggestion you say:

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*Chairman*—continued.

say: "The governors of Queen Anne's Bounty shall transmit the sum approved to the archdeacon, who shall transmit the same to the incumbent, and will satisfy himself before his next annual visitation that the money has been properly expended;" but how are Queen Anne's Bounty Board to be satisfied that the money has been expended?—I suppose they would employ somebody to inspect.

1528. Then you contemplate giving a security upon the living?—Yes; I contemplate, further, all the livings being insured by Queen Anne's Bounty Board.

1529. Then your general view is something similar to what the Bishop of Peterborough propounded just now?—It is. As a fact I have drawn up all these things in a Bill which I sent to the Archbishop of York, and I have written to him for it; I saw his Grace yesterday, and he says that it is at York and he cannot get it. That Bill embodies the whole of my suggestions in detail.

1530. You propose a period of exemption to date from seven years?—I propose that every seven years there should be a survey or examination; that it should be totally independent of the life or death of any incumbent whatever; that it should have nothing to do with a new incumbent or an old incumbent; that we should do away with all detail with regard to that; that there should be no claim upon a man after his death; but a man on coming into a living would take it as it was until the next survey took place.

1531. Practically, it comes very much to what the bishop said: Amend the law of dilapidations and make a common fund by which those things should be met according to the exigencies of the report?—Entirely so.

1532. Have you any suggestions to make as regards the working of the Act?—The working of the Act that I suggest would be as follows: The surveyors would be elected by the clergy in each deanery, and would be called into action every seven years, without respect to the succession of a new incumbent, or the death of an old one. All livings would at once be put in order, the money required being advanced by Queen Anne's Bounty, with whom all the clergy should be compelled to insure. The sums advanced should be repaid with interest by instalments extending over a certain period of years. After the first survey each incumbent would either have to keep the buildings of the benefice in in order, or else a tax not exceeding the annual insurance (that might be modified) should be levied, and carried to a dilapidation account for the benefice. The amount of the value of the fixtures should also be carried to the same account. I should wish to draw attention to the fact of the fixtures for which many of us have paid very large sums.

*Chairman*—continued.

1533. Would you propose to make the fixtures belong to Queen Anne's Bounty?—I would suggest that the amount of fixtures should be carried to the dilapidation account in each benefice as a credit to their side.

1534. Why?—For instance, on succeeding to my own living, the amount of the fixtures exceeded that of the dilapidations.

1535. Would you make blinds a case of dilapidation?—We take them all as fixtures.

1536. But what are you to do when a blind wears out?—A man supplies that himself.

1537. I understood you to say that you wish the fixtures to be credited to the incumbent as money?—Yes.

1538. What is to be done when the blind is worn out with the value of which this man has been credited?—Then it would be revalued. It will only affect the present generation who have had to pay so much for fixtures; and, therefore, when the surveyor came, I think those fixtures ought to be revalued, and the amount put to our dilapidation account in each benefice.

1539. When you went into your living you paid 40 *l.* for your fixtures, did you not?—Yes.

1540. And you say that, as against dilapidations, you ought to be credited with 40 *l.*?—No, they ought to be valued, I think.

1541. You would make them part of the property?—Yes; when each benefice has to be surveyed, the amount of the fixtures should be taken at the same time. These are the points that I have put down to submit to the Committee: "(1.) Surveyor to be elected by the clergy. (2.) Survey to be made at once of all livings. (3.) The survey to be septennial, and not dependent on life or death of an incumbent. (4.) The benefice, not the incumbent, to be liable, and no claim to be made on any incumbent after his death. (5.) All incumbents to be obliged to insure with the Governors of Queen Anne's Bounty. (6.) The amount of the value of fixtures should be carried to a dilapidation account. (7.) That an annual or at least a periodical levy, by per-centage, on the funds of the benefice be made, and carried to the dilapidation fund of the benefice. (8.) A terrier in all cases to be provided. (9.) That lay rectors should be compelled to insure chancels under this Act, but not be allowed to borrow from the Governors of Queen Anne's Bounty.

The Worshipful Thomas Hutchinson Tristram, D.C.L., called in; and Examined.

*T. H. Tristram,* D.C.L.

*Chairman.*

1542. You are judge of the Consistory Court of London and Chancellor of the Dioceses of London, Canterbury and Hereford, are you not?—I am.

1543. I believe that you have attentively considered the question of the Ecclesiastical Dilapidations Act, both in your public position as chancellor of those dioceses, and in your private position as counsel and adviser to the parties who have applied to you upon the subject?—I have.

*Chairman*—continued.

1544. And you have heard complaints from parties holding livings in those dioceses?—It has been my duty as chancellor of those dioceses to attend meetings of the archdeacons and rural deans which have been convened by the bishops of those dioceses for the purpose of fixing or making alterations in regard to the fees to be charged by the diocesan surveyors, and by the secretaries and registrars of the dioceses. On all those occasions there has been some general discussion

cussion as to the working of the Act. I attended, I think, one meeting at Lambeth Palace, two at London House, and one at Hereford. At each of those meetings the bishops inquired of the archdeacons and the rural deans what was their opinion as to the working of the Act. The answer was, I think, that generally they thought it worked well; but the answers were given with some hesitation, and I think that at all the meetings it was stated that there were cases of hardship.

1545. Of course, in your position you are well acquainted with what was the law of dilapidations before the Act of 1871 was passed?—Yes, I have been in practice at the bar since the year 1857, and I have had considerable practice in ecclesiastical cases, and from time to time I have had cases laid before me for opinion upon questions of dilapidations ever since the year 1858.

1546. I believe that, practically speaking, there were very few cases litigated to anything like a final conclusion for a long period of years?—Very few cases were litigated. I have looked into the report since I received a request to attend before your Committee, and I find that between the year 1840 and the year 1860 there were 10 cases litigated in which questions of law were raised. Those questions of law were argued in banc in the various courts of Westminster Hall, and were decided. They were all new questions of law, and they were decided satisfactorily, I think; at least there was no appeal from any of them.

1547. At all events, the judges laid down in those decisions general principles which guided surveyors afterwards as to the amount which they should charge, or what they should take into account as to dilapidations?—Yes; and they also guided counsel in advising their clients as to what they should submit to.

1548. In settling the amount of dilapidations, of course there are questions of law as well as questions of fact?—Yes.

1549. And those decisions guided the parties, under the advice of the solicitor or the counsel employed, as to the things required, and as to the value of those things?—Yes; I may state that in these cases there is generally a desire to compromise matters. In a question between a new incumbent and the executors of a late incumbent, there is never a desire for litigation; of course executors are anxious to avoid litigation.

1550. But still they have a governing tribunal to guide them, and to protect either party who might think himself injured?—Yes; he always had an appeal to the courts of law.

1551. Under the Act of 1871 that system is radically and essentially altered, is it not?—It is.

1552. And the position of the surveyors is that they judge both as to law and fact, being judge, advocate and witness?—Yes, by the Act the incumbent, or the representatives of the incumbent, in a case where a living is vacant through death, are not entitled as of right to appear before the surveyor and state their view of the case, and give any explanation. The surveyor goes to the premises; he surveys the premises and sends in his report without giving an opportunity to the incumbent or his representatives of stating any special circumstances. The surveyor, of course, may make inquiry as to special circumstances, but he is not bound to do so.







1553. And there is no opportunity, at all events provided by the Act, either for the representatives of the deceased incumbent, or for the new incumbent, raising any discussion, or laying before the surveyor facts pro or con?—No.

1554. Then in the event of a new incumbent who might be a young man, or a man coming fresh into the place and knowing little of this Act, not taking action upon it for a month, that report of the surveyor becomes final law, does it not?—The report of the surveyor becomes final law in that case.

1555. And it is absolutely binding upon him and upon the bishop, and upon everybody else?—Yes.

1556. Whether he has violated any principle of law that has been laid down or otherwise?—Yes; there is a proviso in one of the clauses of the Act that after the period of a month, a bishop may give the incumbent, or the representatives of the incumbent, an opportunity under special circumstances of appealing.

1557. That is in the case of vacancy; but in the case of complaint there is no option with the bishop, or anybody else, is there?—There is not.

1558. Supposing that a surveyor's views are that things which existed a very long time ago ought to be restored, or that according to his view the material used should be more ornamental or otherwise, his report and specification as to the works is absolutely binding, is it not?—Yes, his report is binding.

1559. Do you think that it is a right thing that the clergy should be excepted from the general law, and put in a peculiar position that the other subjects of the realm are not put in?—No; I think it works great injustice and gives great dissatisfaction; I may state that I have made it my duty to make inquiries when cases have been laid before me from time to time on the question of dilapidations, as to what was the general opinion of the clergy as to the working of the Act; and the general answer was, that in very many cases it gave great dissatisfaction and pressed very hardly upon them.

1560. Under the 23rd section of the Dilapidations Act, I believe that there is still some little open question whether the bishop is not absolutely bound to put the sequestration in force without discretion, supposing the prescribed repairs are not done?—Yes.

1561. With regard to the money paid to Queen Anne's Bounty Board, under Sections 40 and 41, the new incumbent, whether he has received the money or not, must pay it to Queen Anne's Bounty Board, practically, in six months, and without any power in the bishop, or anybody else, to extend it beyond 12 months?—Yes, that is so by the Act.

1562. And then there is an obligation upon him, notwithstanding that he has parted with the money, and notwithstanding that he may not have got anything, either from the late incumbent, or from Queen Anne's Bounty, to do the repairs in 18 months?—Yes.

1563. Have you in your professional position, heard or found that that works harshly?—I have been told by the clergy that they consider that it works hardly upon them.

1564. Would you give the clergy a right of being heard, and a right of appeal if they were dissatisfied?—I certainly should.

1565. Do you think that there would be any

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*Chairman*—continued.

harm in importing some lay element into that court of appeal, such as the chairman of petty sessions, or some person in a magisterial position, associated with either the archdeacon or the rural dean?—No, I see no harm in that; I should state to the Committee that under varying circumstances, from time to time, you must expect that questions of law may arise in cases of dilapidations, and I think that there should be an opportunity afforded to either of the parties who may wish to raise a question of law, to have that question argued before a court of law.

1566. That is to say, you would have some secular tribunal, at all events, who should be able to decide upon matters which were purely secular?—Matters of law, I think, should be decided by some secular tribunal, or by the courts of law of the country.

1567. From your experience in relation to these matters, would you give the clergy a power of selection of two or three surveyors, or men qualified, without being bound to one?—I do not see any objection to their having a power of selection.

1568. Any more than to a man's having a choice of a barrister to argue his case?—No.

1569. If there are two parties, one to pay and the other to receive, each of them might choose the person who they thought might best carry out their views?—Yes; and under the old law that was very frequently done. In cases laid before me, an in-coming incumbent has sent his surveyor to survey the premises; the outgoing incumbent, or the representatives of the deceased incumbent, have not been satisfied with that survey, and they have sent their surveyor, and then those reports were prepared; the surveyors met; and in all the cases that came before me prior to the passing of the Ecclesiastical Dilapidations Act, the matter somehow or other was settled by mutual concessions, I think, generally, so far as I could ascertain, to the satisfaction of both parties.

1570. I think that under the old law the principle that governed those cases of dilapidations was, that a man was not to be liable, except for the laches of himself, or for things that had occurred during his own incumbency?—Under the old law, I take it that if a suit were instituted in an ecclesiastical court for dilapidations against an incumbent during his tenure of a benefice, the court was bound to take into consideration, firstly, whether the dilapidations had accrued through the default of the incumbent; and, secondly, the value of the living; and the general rule was to order the incumbent to set aside about a fifth or a sixth of the annual value of the living to meet the dilapidations, if they had not accrued through his default.

1571. That is to say, they took an equitable view?—They took an equitable view; perhaps the Committee would like me to refer to one or two cases: there is a case which was argued in the Court of Common Pleas in the year 1743, and it is reported in "Willes' Reports," page 424; it is the case of Sollers *v.* Lawrence, in which this rule is referred to by Chief Justice Willes in delivering judgment, and referred to with approbation; the passage is not very long, and perhaps I may read it: "It is proper, therefore, to consider in the first place whether he" (meaning the incumbent) "was liable. It is certain that if a parsonage or vicarage house be burned down there must be some way of rebuilding it, for necessity's sake and the good of the public; for there must be parsons and vicars, and they must have houses to live in; it follows, therefore, that when they are burned down, they must be built up again. If the suit be brought *ex officio* in the lifetime of the incumbent (and it must be so, because no one is interested to bring it), Dr. Paul informed us that the constant rule is to order a fifth part of the profits of the living to be set apart in order to rebuild the house. This must plainly be for necessity's sake, and when the incumbent is in no default, for if he be in fault he ought (as in the general case of dilapidations) to pay the whole. Several cases were cited by Dr. Paul to this purpose; the case of the deanery-house and the chancellor's house at Chichester, and the case of the vicarage house of Worminghall, in Berkshire, which, though not cases directly in point, yet plainly showed that the ecclesiastical courts usually went by the rule, and they founded their determinations on the injunctions of Edward VI. and Queen Elizabeth, and an injunction of Archbishop Cranmer, enforcing the same, and ordering them to be observed, which, though perhaps not strictly law, were very proper measures for the ecclesiastical courts to govern themselves by, when they otherwise must judge arbitrarily, and without any rule at all." That rule was acted upon; and the only other reported case in which it is referred to is the case of North *v.* Barker, which came before Sir John Nicholl, as Dean of the Arches, in the year 1810. In that case there was a claim made for dilapidations, amounting to the sum of 5,327 *l.*, in respect of St. Cross's Hospital, and the tender was made of 3,795 *l.* Sir John Nicholl lays down in that judgment the law of the case as I have stated it, and he decided that the tender was sufficient.

1572. With reference to Section 70 of the Dilapidations Act, where buildings have been taken down, have you any suggestion to give to the Committee with regard to the operation of the section?—It appears to me that that section might work great injustice. By that section, as I read it, if an incumbent were to pull down some old buildings, and substitute new buildings for them, perfectly adequate for the purpose for which the old ones were used, he might still be called upon for dilapidations for the old buildings which he had taken down.

1573. Unless he had obtained a faculty?—Unless he had obtained a faculty or an order.

1574. At the present time he can obtain a faculty as well as an order under the Act, can he not?—He can obtain a faculty.

1575. But supposing him, not with a view of doing wrong, but with a view of really benefiting the convenience of his dwelling, to have pulled down a certain building without obtaining an order or a faculty, and to have substituted what was more modern or more convenient, he would still be liable under the strict construction of this Act to pay to the successor or to restore the old buildings, would he not?—He would.

1576. Have you heard of any cases where surveyors have endeavoured to find traces of old buildings and ordered them to be built up?—I have known cases where surveyors have found traces of old buildings, and have assessed dilapidations upon them; buildings which I should have thought would have been useless, and buildings

*Chairman*—continued.

as to which, if the incumbent in his lifetime, or during the tenure of his benefice, had applied for faculty for leave to pull them down, a faculty would have been granted.

1577. Would you give a further period of time than the month for an incumbent objecting in case either of complaint or of vacancy?—Yes, I think I should suggest that he should have a further time allowed him.

1578. You would not draw too tight and harsh a line as to the period within which he should make this objection?—No. In many of these cases executors are concerned; I have known in my own experience two cases in which executors were concerned, and in which dilapidations were assessed against the estate. They omitted, not through any default, but through having other matters to attend to, to take counsel's opinion in time, and to take advice in time; and the result was, that they were estopped from taking the objection.

1579. Whatever tribunal may exist, you think that if special circumstances are brought before it, the tribunal should have power to entertain an objection?—I think so.

1580. Supposing, for instance, that an incumbent is out of the kingdom, or that the incumbent of a benefice had died abroad, or gone there on account of his ill-health, and that then the survey is made, no one here representing him, he is entirely shut out at the present moment, is he not?—He is.

1581. Under special circumstances like that, the ordinary courts of law would give time, would they not?—They would.

1582. And you think that there ought to be time allowed?—I think that there ought to be time allowed.

1583. Supposing the bishop's authority to exist as it is now, to whom would you suggest that an appeal should be made; to a court of law, or to the magistrates in quarter sessions or petty sessions, or to a county court judge?—I would suggest an appeal to a court of law. By the law which was in operation prior to the passing of the Act of 1871, there was always an appeal to a court of law. During the tenure of a benefice anyone interested in the matter, such as the patron or any person who might be conceived to have any interest in the living, or any of the public, might take proceedings against the incumbent for dilapidations in the ecclesiastical court; and in that case, if the court found that there was any sum due for dilapidations, it would make an order upon the incumbent. That was the case referred to in Chief Justice Willes's reports. Upon the death of an incumbent, or upon the avoidance of a living, proceedings might be taken for dilapidations, either in the ecclesiastical courts or at common law; but they were generally taken at common law, and I think that the law works satisfactorily. Questions of dilapidations of course are questions of law and fact; questions of fact generally may be very fairly decided by one or two, or three surveyors; questions of law, I think, would be more satisfactorily determined in a court of law.

1584. Assuming your view of making a court of law the court of appeal, it of necessity follows, does it not, that each party should choose their own surveyor, on whose report the contest arises, or else the surveyor would be the party liable to the costs?—Yes.



*Chairman*—continued.



1585. Supposing that the diocesan surveyor exists as at present, and that the party appealing against his order succeeds, the other man might very fairly say: "I never appointed this gentleman; why should I pay any costs about him?"—He might say so.

1586. Would it not, therefore, be necessary, if you wished to give a right of appeal and freedom of action, that that portion of the old law should be brought back again which gave either party a right to select a surveyor, or both parties a right to agree upon one surveyor, to be chosen from the whole body of qualified surveyors?—I think that it would be more satisfactory.

1587. Supposing that the report of the diocesan surveyor is altogether upset on appeal, and that the man asks for costs against someone, what then?—That is no doubt the difficulty.

1588. Would not that difficulty be removed if there were freedom of choice to the party who was either to pay or to receive?—It occurs to me that it would be a hardship to throw the cost upon the surveyor merely because he has been guilty of an error of judgment.

1589. If the party who was really liable, or who claimed to be entitled, chose his own surveyor, the consequences of his choice would fall upon him?—Certainly.

1590. And therefore giving an appeal to a court of law, or to any other tribunal, involves as a consequence that the man appealing or objecting, or having to pay, or having to receive, should choose the instrument by which he wishes to act?—Quite so.

1591. Have you any further suggestions that you can offer to the Committee for an alteration of the law?—I have considered that branch of the case, and it appears to me that the difficulties and objections might be met in this way: You might have a diocesan surveyor, or one or more diocesan surveyors, appointed for each diocese. When a living is full, and complaint is made to the bishop either by the archdeacon or by one of the rural deans that the buildings on that living are in a dilapidated condition, I should give the bishop power to require the surveyor to survey them and to make a report; and I should give the incumbent leave to appear before the surveyor and make any suggestions that he might think proper. If the incumbent were dissatisfied with the surveyor's report, I think that he should have a right to appeal from that report to a court of law; and I think that he might be allowed on that appeal to impeach the surveyor's report, say upon affidavit. I should give him leave to call in two or three other surveyors or as many surveyors as he might like, and to instruct them to survey the premises and give their reports upon oath; and then I think that a court of law or a judge would be able on those affidavits to form a very fair opinion upon a question of fact, as to what the sum should be which the man ought to be assessed to pay. Then if the clergyman wished to raise any point of law, he would have opportunity of raising before the judge such a point of law. No doubt the application on the part of the incumbent of a benefice which was full would be *ex parte*; but the judge would treat the report of the diocesan surveyor as *primâ facie*, as a good report. I would suggest that it should be for the incumbent to impeach that report, and to satisfy the judge that the diocesan surveyor

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was wrong, and if he were satisfied that he was wrong, of course he would give his decision in accordance with that view.

1592. This would be a rather costly proceeding. If the surveyor was wrong, and the other man was innocent and right, who should bear the burden of all these costs?—That is the difficulty.

1593. Supposing that I was a clergyman, and I was charged with having to pay a large sum of money, and I objected to it, and showed that the charge was altogether wrong, and that the money would not come to a tenth of this sum; I ought not to be burdened with costs which would, perhaps, amount to more than the very sum which I was called upon to pay at first?—No; but the clergyman would be in a better condition than he is in at present. You cannot expect the bishop to pay the costs, you cannot expect the archdeacon or rural dean to pay them, and you can hardly expect the diocesan surveyor to do so; and that is the great difficulty, no doubt, in dealing with this question.

1594. At all events, it might be an advantage if there were some cheaper tribunal of appeal in the immediate locality, to whom everything, except very great questions, might be referred?—There might be an advantage in that.

1595. And very great questions you might have sent by the bishop to be argued before a court of law?—Yes.

1596. If there were a local tribunal of that sort, do you not think that it would be an advantage to have some small amount of lay element imported into it?—I think it would.

Mr. *Birley.*

1597. I understood you to say that a clergyman would be in a better position than he is in at present; I confess that I do not see how?—At present he is not of right entitled to an appeal.

1598. But is not a man in a better position who has no appeal, except an appeal to his bishop, than if he is simply relegated to a court of law which is entirely beyond his means, and where there is no practical remedy even if he gains his case?—I suggest that he should be allowed to go on a surveyor's report before the county court judge, or a local tribunal, or the chancellor.

1599. Would not some such tribunal be much more satisfactory than to send him up to Westminster Hall?—Certainly.

1600. I suppose that these cases are not cases to be decided in Westminster Hall, but they are rather questions of fact, are they not?—They are.

1601. Of course there will be some cases in which the Act will have to be construed, but they will be entirely within the experience and the intellect of a county court judge?—Yes, or even of a magistrate; but there are occasionally questions of law arising as to dilapidations under varying circumstances, and I think that there should be provision in any amendment of the law to enable persons under such circumstances to bring these matters before a court of law.

Mr. *Cowper-Temple.*

1602. In the case which you contemplate of having recourse to a court of law, would it be necessary for him to employ counsel, and to incur a good deal more expense than he would incur if he went before a county court judge?—If the case came up to Westminster Hall, I think it would be advisable for him to employ counsel to argue a point of law.

Mr. *Cowper-Temple*—continued.

1603. Have you any further suggestions to make?—I have one further suggestion to make as to the principle upon which dilapidations are assessed when a living is vacant, either by death or by resignation. At present, on the vacancy of a living, the incumbent is liable for dilapidations which have not occurred through any default of his own. Cases have come under my own observation in which there has been a small living, the income of the incumbent being derived, almost exclusively, from land. There have been old buildings upon that land, a farm house and farm buildings. Through the ravages of time and wear and tear, those buildings have become dilapidated. The surveyor, after survey, has come to the conclusion that it is of no use patching them up any longer, and that the only remedy is that they be rebuilt. If they are in such a dilapidated condition that the only remedy is to rebuild them, at present the old incumbent, or his representatives, are bound to rebuild them. There is one case of which I was told the other day (I forget the name of the case), where a clergyman had been for seven years incumbent of a small living in Essex, the net income of which was about 100 *l.* a year. The property from which the income was derived was partly cottage property, and the cottage property, through age, is in a very dilapidated condition. He has resigned the living, and he is now called upon to pay 400 *l.* for those dilapidations. I would submit to the Committee that in such a case as that the dilapidations should be assessed against the outgoing incumbent, or against his representatives, on an equitable principle. If proceedings had been taken in the ecclesiastical court under the old law against that gentleman whilst he held the benefice, the ecclesiastical judges would have been bound to look to the revenues of the benefice, and the circumstances under which the dilapidations had occurred; and certainly they never would have called upon him to pay 400 *l.*; the most that he could have been required to do would have been to set aside 20 *l.* a year, one-fifth of the income. I think that that principle which was laid down in the ecclesiastical courts, and which was always acted upon until this Act came into operation in the case of benefices where they were full, and proceedings were taken against the incumbent when he was in the benefice, should be extended to cases where benefices have been vacated, either by death, or by resignation, or by exchange.

*Chairman.*

1604. Unless there was some other public fund that would meet the difference between what the incumbent, you think, ought to be liable for, and what the restoration of the buildings would require?—Yes.

Mr. *Wait.*

1605. Is not the case which you refer to a necessary result of an Act of Parliament of great stringency following a period of great laxity, because, if the Act had been in previous operation, I presume that those cottages would not have been allowed to get into such a terrible state of disrepair?—To a certain extent, I suppose it would

Mr. *Wait*—continued.

would be so; but I think you will find that there are many instances of that kind.

Mr. *Cowper-Temple.*

1606. In regard to the practice in the ecclesiastical courts, if the old incumbent only paid a portion of the cost of rebuilding, upon whom did the remainder of the cost fall?—The remainder of the cost would then fall upon his successor.

1607. Would it fall upon his immediate successor exclusively, and not upon future successors?—I do not think that that question has ever been raised.

1608. But in some way it would be shared between the outgoing and the in-coming incumbent, would it not?—Yes. The rule which was laid down by Linwood before the Reformation, seemed to me to be an equitable rule. But I think it would be desirable that I should refer your Committee to the old rule of ecclesiastical law upon this point. It is to be found in Volume 2 of "Burn's Ecclesiastical Law," by Phillimore, page 147, under the title of "Dilapidations"; the passage to which I would direct your Committee's attention runs thus:—"If the rector of a church, at his death, shall leave the houses of the church ruinous or decayed, so much shall be deducted out of his ecclesiastical goods as shall be sufficient to repair the same and to supply the other defects of the church. The same we do decree concerning those vicars who have all the revenues of the church, paying a moderate pension. For inasmuch as they are bound to the premises, such portion may well be deducted, and ought to be reckoned among the debts: always, nevertheless, having a reasonable regard to the revenues of the church when such deduction is made." The old rule of ecclesiastical law was that the claim for dilapidations ought not to be made upon the incumbent's patrimony, but upon the revenues of the benefice.

1609. And that the amount annually extracted from him should bear a relation to the total revenues of the benefice?—Yes; there should be certain adequate provision made for his maintenance and for keeping up the houses and property.

1610. And you find no recognition of that principle in existing statutes?—I do not.

Mr. *Freshfield.*

1611. There is no principle laid down in this Act to regulate the nature and extent of the repairs which the surveyor is empowered and authorised to direct, is there?—No.

1612. The result of course has been in practice that the various surveyors in the various dioceses have adopted different principles?—Yes; I believe so. I have been told so.

1613. That cannot be right?—No.

1614. Do you not think that there ought to be a principle laid down by which all surveyors should be guided as to the nature and extent of the dilapidations that they should direct?—I think that it would be very desirable.

1615. We have had cases before us in which a surveyor has directed repairs sufficient to put the premises absolutely in their original state of stability; we have had even a case in which one surveyor ordered a glebe house to be put in a condition in which it never was by the original construction. That cannot be right, can it?—No.

1616. Do you not think, then, that there ought



Mr. *Freshfield*—continued.

to be, by statute or other competent authority, a principle laid down by which all surveyors throughout the country should be guided in considering dilapidations?—I think there should.

Mr. *Monk.*

1617. Do you think that further power should be given to bishops, enabling them to order other buildings, such as tithe barns or farm buildings, or stone walls, to be pulled down which are not needed for the benefice?—There is power now in the ecclesiastical courts, as you are aware, to issue faculties for pulling down buildings; and I have issued a great many myself in Kent and in Canterbury.

1618 My question had reference to Section 71 of the Act; under that section is not the bishop enabled by writing under his hand to order certain portions of the glebe house to be pulled down without recourse being had to a faculty?—Yes.

1619. Do you think that the powers under that section should be extended?—Yes; I see no reason at all why this power should not be extended.

1620. Is there uniformity in the tables of surveyor's fees taken in the three dioceses with which you are officially connected?—I think that they are pretty much the same. I know that the fees were very fully discussed in each diocese.

1621. Do you think it desirable that there should be one uniform table for the whole country?—Yes, I do not see any reason why there should not be. I think it is desirable that there should be a uniform scale of fees.

*Chairman.*

1622. With regard to the 70th section, do you know that it has been held in some dioceses that the words "he shall not be liable to dilapidations in respect to buildings so pulled down," prevent the section applying to admittedly useless buildings that have fallen down by time; and that although the incumbent might be exempt with regard to those which have been taken down, where he has utterly neglected them and let them fall down, he is liable for dilapidations?—Yes, I believe that that has been held.

Mr. *Birley.*

1623. It may have been considered a necessary probation against carelessly allowing buildings to fall down; or do you think it a useful provision?—I can perfectly understand a clergyman allowing a barn which is of no use, to fall down; and I think that if the bishop were satisfied that the building was of no use, the clergyman ought not to be called upon to pay dilapidations for it. If the incumbent had taken proceedings to obtain a faculty authorising the demolition of the barn, a faculty would have been granted.

1624. Is it not desirable that he should obtain that permission, rather than that he should allow the building to get out of repair without any authority?—Yes, in future cases I think it would be desirable, but I think it presses very hardly upon the clergymen of the present day.

*Chairman.*

1625. Have you any other suggestion to make to the Committee?—There are two sections to which I wish to direct the attention of the Committee. By section 29 of the present Act, the

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bishop is required to direct the surveyor, within three months of the occurrence of a vacancy, to survey the premises; but there is no time mentioned (according to the construction put upon the Act) within which the surveyor is to survey the premises. There was a case in Yorkshire which came under my own observation, in which a clergyman had resigned his benefice. As the Committee is aware, upon resignation, the clergyman has no further control over the vicarage or the buildings. A sequestration is issued from the ecclesiastical courts; the buildings are placed under the protection of the churchwardens; they have the charge of the buildings, and they also receive the revenues of the benefice out of which they pay the salary for a curate. In this case the gentleman resigned his living, and the bishop, no doubt, issued an order to the surveyor to survey the premises; but the surveyor did not do it until some time afterwards, until the expiration of the three months. The result was that after the clergyman had given up the living and the parsonage house, the dilapidations increased; he estimated that they had been increased by some 70 *l.* after he had given up the living. The surveyor assessed him in the whole amount. What I would submit to your Committee is, that on a vacancy it should be competent to the clergyman or his representatives, directly the living is vacant, to call in a surveyor, and have the dilapidations assessed; it was so under the old law. Under the old law, no doubt, the new incumbent sent his surveyor, and if he were not appointed for some months, his surveyor would not survey the premises for some months; but an incumbent who had resigned, or the representatives of a deceased incumbent, would not always protect themselves, and they did not protect themselves in many cases.

1626. The new incumbent taking all the profits of the benefice, less the expenditure for doing the services, from the instant the other man died?—Yes. Then there is another decision which leaves the law in an unsatisfactory state; that was a decision given by the Master of the Rolls

*Chairman*—continued.

in Jones *v.* Dangerfield. It is reported in the "Law Reports," I. Chancery Division, page 438. In that case a living in the diocese of Canterbury had been under sequestration; the incumbent died; the sequestrator had at the time of his death a considerable sum of money in his hands, certainly upwards of 600*l.*; the sequestrator had given the usual bond to the bishop, and one of his duties was, out of the funds that he received from the living, to keep the buildings in repair; he had failed to do so, and the Archbishop of Canterbury issued an order to the surveyor to survey the premises, under the Ecclesiastical Dilapidations Act, and he found that the repairs for which the late incumbent was liable were 174*l.* 18*s.* The late incumbent's affairs came under the jurisdiction of the Court of Chancery in an administration suit, and the question was raised whether the sequestrator, out of the money in hand, ought not to pay into Court this sum which was assessed for dilapidations, to be divided amongst the creditors generally. The Master of the Rolls decided that, inasmuch as no order had been made during the incumbent's lifetime, under the first part of this Act, for payment of dilapidations during an incumbent's lifetime, there was no claim against the fund.

1627. A question has been raised, I believe, whether there was not a claim against the Archbishop there; it was suggested that the Archbishop was liable for negligence, but of course it would not have been brought under the Archbishop's observation.

Mr. *Birley*.

1628. Have cases occurred to your knowledge of the surveyor's estimate not being equalled by the expenditure upon the property?—I have heard of one such case.

1629. What happens under those circumstances?—The clergyman lays out the balance of the money in improvements. I know of one case, because it happened to a relation of my own; there was a balance of 30*l.*, and that was laid out in improvements.

Mr. Edric Bayley, called in; and Examined.

Mr. *Bayley*.

*Chairman*.

1630. You are a Solicitor, residing in London, are you not?—Yes.

1631. And your brother, I believe, was inducted to a vicarage in July 1869?—Yes, the vicarage was Cassington, in the diocese of Oxford.

1632. Do you happen to know whether or not on that occasion he received any amount for dilapidations?—No; at the time of his induction the late incumbent resigned; but his circumstances were such that there was no possibility of getting any dilapidations from him; and so Mr. Bayley had not any survey made of the dilapidations.

1633. Then, in fact, your brother received nothing?—Nothing.

1634. Was the house in a good or bad state?—It was very old indeed. It looked in very fair condition, but all the boards were worm eaten; it was a very small eight-roomed house, and it had not been the custom for the incumbent ever to live in it. It was near Oxford, and one of the chaplains of Christchurch generally held it, who lived in

*Chairman*—continued.

Oxford, and went there on a Sunday. I believe it never had been the residence of the incumbent; it was unfit indeed for any gentleman to live in.

1635. Did your brother make alterations or improvements?—He did not make any alterations in the house.

1636. Did he live there?—No; he lived in Oxford. There was a farmyard there and farm buildings round; there were stables and a barn, and he made some alterations in those; he removed some of them and built them in other places; and there were some walls there which he removed but did not rebuild. But when he went there the rent of the glebe was 257*l.* 10*s.* net, and when he left it was paying 476*l.* 10*s.* 6*d.*, less rates and taxes; I should tell the Committee that he died on the 21st April 1875. The assessment on his going there was 225*l.* 2*s.* 6*d.* gross, and the rateable value was 196*l.* 19*s.* 8*d.*; but under the new assessment, in the autumn of 1874, it was raised to 425*l.* 13*s.* 9*d.* gross, and 372*l.* 8*s.* 10*d.* rateable value. I mention that to show how much

*Chairman*—continued.

much the value was increased under his farming of the glebe; that was not entirely his own improvement; it would have been just the same as far as dilapidations were concerned, but he had borrowed 520 *l.* on the living from, I think, a drainage company, payable in 25 instalments, of which he had paid four when he died.

1637. Had all that sum of money been laid out on the property?—Yes.

1638. On the occasion of his death, what happened?—On the 21st of July 1875, I, as his executor, received from the diocesan surveyor a report for dilapidations, which he put at 414 *l.* 9 *s.*

1639. Did you have any notice of the diocesan surveyor going there at all?—No.

1640. Was that the first intimation that you had of the matter?—Yes. The sum was given in gross; there were no details of the figures.

1641. Was there a detailed specification of the works?—Yes.

1642. You had no intimation from the surveyor or from any one that the surveyor was going over?—No.

1643. What action did you take?—I took a surveyor down there from town with me, and he looked over everything, and he advised that I should ask the bishop's licence for those alterations, which had not been asked for at the time that they were made; but if that was obtained, he considered that the cost of putting the buildings into repair would be 106 *l.*

1644 Did you object to the report?—Yes. On the 14th of August, within the time, I sent in my objections to the bishop, and I asked his license for the alterations. On the 28th of August I received a letter from the bishop's secretary, stating that the surveyor held by his report (I objected to it on points both of fact and law), but adding that the bishop was willing to have a second report by a diocesan surveyor of some other diocese at our cost. As far as the license was concerned, the new incumbent said that he would not give his consent to it, and the bishop did not think that he could give it retrospectively.

1645. That is to say, the buildings which your brother had altered?—Yes.

1646. And you were under the impression, at all events, that he had charged you for those buildings that your brother had taken down?—Yes; for instance, there was a pigstye on one side of the barn, which was pulled down, and a new and larger and better one built on the other side; they required us to remove the pigstye from the one side, and to put it back on the other. On the 14th of October I wrote to the bishop to ask for a second surveyor. I was advised that there was nothing else to be done; and at the same time I asked that the second surveyor should not be connected with any diocese in any way, and also that the figures of the report of the diocesan surveyor and of the second surveyor should be furnished to me. The bishop replied, saying that he had considered it carefully, and that he thought it was best to employ some diocesan surveyor, because he would know more of ecclesiastical dilapidations than other surveyors would; and then his secretary wrote to me to the same effect, but saying that he could not ask the surveyor to give me any details, because it was not directed under the Act that he should do so. I wrote to



*Chairman*—continued.

say that the reason why I should like to have an independent surveyor was that one diocesan surveyor's report is submitted to another diocesan surveyor, and the next day the judge may have his own report submitted to the man whose report he judged the previous day. With regard to the details, there is nothing in the Act taking away the obligation upon a man to furnish details. However, he said that it was not the custom, and that he never did it, and he refused it. Then they mentioned two diocesan surveyors, and they said that they would consider any other diocesan surveyor that I liked to mention, but they did not tie me down to anyone in particular. However, I did not know anything about diocesan surveyors, so I took one of the two that they mentioned. He made a survey, and he brought down the dilapidations to 363 *l.*

1647. What additional sum did you pay for his services?—I had to pay 16 *l.* 12 *s.* 6 *d.* First, his costs, which were about 11 *l.*, and then there were the bishop's costs; so that the extra cost of having the second surveyor was 16 *l.* 12 *s.* 6 *d.*

1648. Then what happened; did you make any further appeal?—No; they told me that it was final, and I was advised by counsel that it was so; and so I paid the money.

1649. Do you think that this Act presses hardly upon the clergy, or that they are shut out from any rights by it?—I think it does at present, certainly; perhaps after it has been working a great many years it may get right under the five years' clause.

1650. From your experience do you think that the clergy ought to have either a right of choice or a more free right of appeal?—I should hardly like to call it an appeal; but I fancy, from what I heard the Bishop of Peterborough say to-day, that it would not be disagreeable to the bishops if they were a good deal relieved from their judicial function in these matters, and simply acted ministerially in uncontested cases adopting the report of the surveyor, and in contested cases simply adopting his report so far as to give the parties something to go upon. I would suggest that the real judge, keeping it in the diocese, should be the chancellor of the diocese.

1651. Would you give a longer time than a month for parties to consider?—I think that it would be better; as, in most of these cases, it is after the death of the clergyman, I think they certainly ought to have a longer time.

1652. Would you suggest their being heard before the tribunal as to the grounds of their objection previously to their sending another surveyor?—Yes, I would have the surveyors of both parties cross-examined, and have them put on their oath; and I think that it would be right that the rural dean, who probably knows more about it than most people, should be there to assist the court; I also think that it should be in the discretion of the court to decide upon the costs, and not necessarily that those costs should be borne by either party. The rural dean or the archdeacon, I think, might say that he thinks the place is out of order; of course it would be utterly impossible to make him pay any costs, because if you did, no rural dean or archdeacon would ever again make any complaint. I think if in those cases the incumbent shows that he has left the place in repair, it would be very hard to

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*Chairman*—continued.

charge him, and that then the costs might very properly be paid by Queen Anne's Bounty; but I think that it should be entirely in the discretion of the court, if they discovered that there were a good many dilapidations, to order the man to pay them himself; of course you could not make the archdeacon pay them.

1653. The point for which you now contend is, that before the surveyor's report is made final, the tribunal, whatever that tribunal might be, should hear the parties as to their objections, and be at liberty to cross-examine the surveyor?—Yes.

1654. Have you any suggestions to make to the Committee with regard to the time at which this should be done, and with regard to paying the money into Queen Anne's Bounty?—It seems to me that it is very hard upon the new incumbent to make him pay at all when he may recover nothing at all. A man may be presented to a living, and after he has been there a short time he may find that the last incumbent is utterly insolvent, and that he will have to pay it himself. I cannot think how, on those terms, clergymen take livings at all.

1655. Would you propose then to make it a charge upon the living, either in whole or in part, if some tribunal found that it was absolutely impossible to recover anything else?—Yes.

1656. As regards the pulling down of buildings, under section 70, to which this pigstye case seems to apply, would you exonerate the incumbent altogether if he did not take the ordinary precaution of having some authority to justify his statement?—I think that the bishop should have the power to give his authority retrospectively.

1657. That is to say, that if an incumbent could show that he had benefited on the whole, either the glebe buildings or the residence, the bishop should have power to do it when it was complete, as well as beforehand?—Yes.

1658. And perhaps when the alterations were complete, he would be better able to judge than if he sanctioned the buildings being pulled down before?—Yes. It seems very hard upon an incumbent to have to pay for other people's dilapidations; not only is it hard upon his estate, but it seems to me to be very hard upon all the creditors of the estate.

*Chairman*—continued.

1659. You mean that it is hard that an incumbent who comes in now, or who came in previously to this Act, should have to pay for the laches of his predecessor?—Yes. In this case of my brother's, and in cases which occur every day now, the incumbent has to put the place into thorough repair, and the law does not consider in the least what his defaults are. I believe that this Act was a good deal passed in order to put dilapidations on the same footing with debts. If his own defaults were put upon that footing, I think that it would be right enough; but does not it seem very unjust in the case of an insolvent's estate to put dilapidations perhaps of a century upon the same footing as a man's ordinary debts to his tradesmen? In this case, I think that something might have been allowed for unexhausted improvements; in fact, something in the same way as was allowed by the Act of last Session to tenants for years.

1660. In this case of your brother's, where he had nearly doubled the rent by improvements that were not exhausted in his time, and that would not be exhausted for many years after, you think that that should have been taken into consideration when they assessed the dilapidations, and either that he should have been allowed for them, or that Queen Anne's Bounty Board should have found a sum to which his successor should have contributed?—Yes. I should like to draw attention to the 65th section, with regard to the repayment of surplus; it says, that "if any surplus shall remain of moneys standing to the credit of a dilapidation account, after satisfying the requirements of this Act, such surplus shall be applied in discharge of any principal sum owing on the security of a mortgage made by the incumbent under the provisions of this Act, and if there shall be no such sum, or if the surplus be more than sufficient for the discharge of such sum, such surplus or further surplus shall be paid to the incumbent or to the sequestrators." It seems to me that the words "the moneys" there apply to the moneys which have been received from the late incumbent or his representatives from the present incumbent or from a sequestrator; and therefore it seems to me that if there is any surplus left it ought to be paid to the person from whom the money was received.

## *Monday, 8th May* 1876.

MEMBERS PRESENT.

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|---|---|
| Lord George Cavendish. | Mr. Beresford Hope |
| Mr. Dodds. | Mr. Monk |
| Mr. Freshfield. | Mr. Wait. |
| Mr. Goldney. | Mr. Walter. |

GABRIEL GOLDNEY, Esq., in the Chair.

The Most Reverend the Lord Archbishop of York, attending by permission of the House of Lords; Examined.

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*Chairman.*

1661. I think your Grace has considered for some time the Ecclesiastical Dilapidations Act of 1871, and that you gave a good deal of consideration to it when it was passing?—Yes, I have given the subject attention for some years.

1662. When the Act came into operation, the first thing that was required to be done was the appointment of surveyors in each diocese?—Yes.

1663. It has been held, I think, by the courts, or at all events by several of the bishops, that by Section 8 of the Act, when the surveyors have been appointed, either one or more for a diocese as the power became exhausted?—The power became exhausted until one or the other was removed for any of the causes mentioned in the Act.

1664. Supposing that one surveyor only had been appointed for a diocese, and that he had been appointed generally, you could not appoint any other until he had removal, either by complaint or death, occurred?—In the case of our own diocese we took good care to appoint for a time experimentally, and that was expressly understood; and, in fact, we did, after, I think, an interval of two years, change the number of surveyors and make a fresh arrangement altogether.

1665. That is to say, when the first period of appointment had expired?—When the first period of appointment had expired.

1666. The appointment of surveyor rests with the archdeacons and rural deans, subject to the confirmation of the bishop, does it not?—Yes.

1667. But the bishop has power himself, without calling on them, to remove on complaint of unfitness?—Yes; and, virtually, I have exercised that power of removal in one case.

1668. But, as regards the payment of the surveyor, there the bishop comes in and is a necessary part of the constituent body to fix the fees?—Yes, with the chancellor.

1669. I see that Section 10 of the Act stipulates that the surveyor is not to be paid by salary but only by fees; do you see any reason why an officer of that character, and especially if there are only one or two in a diocese, should not be paid by salary?—I do not see any objection, in principle, to the payment by salary; but it was thought at the time the Bill was drawn, that as

*Chairman*—continued.

the work was only incident to certain benefices in a certain time, those benefices ought to pay, and that the whole of the benefices should not pay a constant tax.

1670. Complaints have been made with regard to the amount of fees, and ideas have entered into people's minds, that in some of the cases where the fees are paid partly by commission and partly by per-centage upon the amount of the works, the surveyors may, or may not, be so careful in estimating the sum as if they were paid by salary?—I do not see any objection in principle to the paying by salary, but I think that an incumbent would feel when he had established a very good house, that there never would be much dilapidation upon it, and that he would rather pay the fee required, and carry on his insurance for five years, than be constantly liable to a fixed payment to a surveyor.

1671. I am not taking a fixed payment. Supposing that there was one, every time when an inspection was required a fixed fee to be paid, say, of five guineas, which would go into a common fund, but that the surveyor's salary should be fixed at an annual amount, for which he should be bound to make all those inspections, would you see any objection to that?—I do not see any objection in principle to that.

1672. Supposing the costs of the dilapidations to be large, but the work in surveying them not to be material, that is to say, occupying only a day, would not a salary be the best mode of paying a man?—No; I confess that I think that, in every point of view, supposing that the present diocesan system continues to prevail, it is better that it should be done by fees. I do not think that any grievance on the part of the clergy, real or imaginary, would be removed by paying the surveyors by salary instead of by fees; and though I am aware that the clergy object to fees, I believe that that applies to every form of fee, and I do not think the change would be any improvement.

1673. Do you not think that they have reason to object to it where they have to pay a commission on the amount, in addition to the payment to their own architect?—In our diocese there is a small commission when the surveyor is not employed as the architect, and the usual full

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commission when he is so employed. It would be unfair to exact two full commissions.

1674. You do not see your way at present, supposing the Act to be continued, to substituting one or more salaried surveyors for the existing state of things?—I think that is a question mainly for the clergy, and I should not like to give an opinion about it without consulting the clergy more fully. As I said at first, it is not a question of principle.

1675. As soon as the surveyor is appointed then he might be put into action, might he not, by one of four courses; either by complaint of the rural dean or archdeacon or patron, or by request from the incumbent himself, to have his living surveyed?—Yes, under Clause 12.

1676. And when he is put in motion he has to make a report defining three things; that is to say, the works that are needed, the amount of cost, and the time within which the works ought to be executed?—Yes.

1677. If under Section 16 no objection is raised by the incumbent to that report, it becomes absolute, does it not, both as against the incumbent and as against the bishop, who has no discretion at all?—Yes.

1678. Do you consider that when the report becomes absolute in default of there being any objection, or the bishop having made a modified report, he has any power of the extension of the time within which the repairs are to be done. If the bishop does not modify the report, has he any power to extend the time?—I think he has.

1679. Cases have been stated here in which, although the bishop wished to give a longer time for repairs, he has felt himself limited under that clause?—I should have held that under Clause 19 the bishop had a general power to extend the time.

1680. Notwithstanding this finalty of the report; that as to the time only he might have the power to modify the report subsequently?—Yes, I may just state that I take a narrow view of the bishop's power under Clause 16. I think that he cannot enter into the thing as a man of common sense and say that this or that matter might as well not be done, but he is bound to hear it judicially as a case in which two parties are interested, and that he can only decide against the survey on the ground that the survey had been imperfectly or improperly made.

1681. Or had embraced subjects which might be a question of dilapidation or no dilapidation?—Yes, that would be where the survey was improperly made; I think he would not have the power to say, "I, from my knowledge of the benefice, think it is not worth while to repair this," and so on. There is one great difficulty in the working of the Act which I may mention here, which is that if the bishop were to give a decision which would have the effect of reducing the money too much, the result would be that the repairs could not be executed and the order could not be given; for there is no other source from which the money could be drawn.

1682. Does that apply to the first part of the Act as well as to the second?—I am afraid it applies to the Act throughout. Supposing, for the sake of argument, that a surveyor formed his notion of what the value of the works was in the year 1870, and that before 1875 there was a rise of 20 per cent. in building expenses, he would estimate for an inadequate sum, and

*Chairman*—continued.

then the new incumbent would say, "I received so much, but unfortunately it is not enough to do the repairs." That is no doubt a fault in the Act.

1683. I fancy that that applies to vacant benefices, but I do not think that the objection applies to the cases of complaint. The distinction, as I read the Act, is this: that in cases of complaint the man is bound to do the repairs, whatever the cost may be?—You are quite right; the person liable is bound to do the repairs, whatever the cost may be.

1684. Whether the surveyor's report might be right or wrong?—The difficulty arises in the case of vacant benefices.

1685. I am now directing your Grace's attention simply to the first portion of the Act?—May I say, once for all, that I have come here very unprepared, and I am afraid I shall waste the time of the Committee a little? If I had at all known that I should be called, I would have brought some documents from home, and made myself master of the details in a greater degree than I have been able to do.

1686. There is a distinction in the Act between the application of the party himself to get a five years' certificate, or on a complaint by those interested, and what arises as a matter of course on a vacancy. I should like to take your Grace for one moment to the cases of sequestration. Previously to the Act of 1871 there was no obligation on the sequestrator to do the repairs, was there?—Pardon me, that was not the case. I know a case in point where a solicitor, before the Act of 1871, undertook to act as friendly sequestrator of the benefice for an incumbent whose affairs were in a very bad condition; the incumbent suddenly died, and the personal loss to the solicitor was, legally speaking, enormously great; I do not know whether he was indulged and allowed to escape from it, but he was personally liable for the whole of the repairs of the benefice of which he was sequestrator.

1687. On the vacancy occurring, he stood in the shoes of the preceding incumbent?—Yes; I have no doubt at all about the state of the law before 1871; the sequestrator was liable, and, moreover, he had much greater power than he has under this Act, for he could repair from time to time, whereas a sequestrator, under the present Act, according to the construction that has been put upon this Act, must repair once for all, and he cannot repair from time to time.

1688. And this Act gives a prior claim to the whole of the dilapidations over all the other creditors, does it not; that is to say, that under Section 20, beyond paying the curate or curates for doing the duty, this is made the first charge?—Under the old law, that was so. I speak under correction, but my belief is that it was a sufficient return to the creditor to say that the money in any given year had been expended in such and such items of dilapidations.

1689. In fact, according to your Grace's views, Section 20 does not practically alter the state of things from what it was before?—No, but the whole of the sections make the sequestrator's power smaller than it was before.

1690. The sequestrator is a public officer, and he has to pay this money into the Governors of Queen Anne's Bounty in the same way as the case of an ordinary incumbent on a vacancy, has he not?—That is so.

1691. And

*Chairman*—continued.

1691. And he cannot get this money out again to do the repairs of the benefice until he gets a certificate from the surveyor that they had been done?—Yes; that seems to me a needless operation.

1692. But where is a public officer to get the money from to do the repairs, if he has paid it all in?—Under the old law he received the whole money for a benefice, and spent it himself, and he was accountable through the courts of law to the creditors for any misapplication of the funds; but he could himself apply, subject to that liability, any portion of the money that he received for the necessary repairs; he only pays the dilapidation money to Queen Anne's Bounty.

1693. He pays the amount of money that the surveyor has estimated as the cost of the repairs, and until he has completed that sum he has to go on paying to Queen Anne's Bounty without paying any other amounts except the curates?—Yes, that is so.

1694. Complaints have been made generally by incumbents that they, having to pay the whole cost of the dilapidations into Queen Anne's Bounty, have not the money in their own hands to do the repairs, and therefore are obliged to find the money from other sources to do the repairs, because the Act requires a certificate that the repairs have been done before they can get the money back again; that is the ordinary process under the Act, is it not?—Yes.

1695. The money is paid in in the first instance, and only comes out when a certificate is given that the repairs have been done?—Yes.

1696. So that, practically, the money has to be found twice over?—That would tend to increase the cost, because there would be some sort of borrowing somewhere; it would either be that it would be put on by the contractor in view of his not receiving his money for nine or twelve months, or the incumbent must borrow if he wishes to pay.

1697. How can the sequestrator get the money, he being merely an official?—If you ask me, I see no need whatever for this provision under Section 20, which is applicable to the sequestrator only.

1698. The sequestrator, being an official under the bishop, might have the power to do the repairs himself, might he not, without the process of sending the money up to Queen Anne's Bounty and getting it back again?—The sequestrator is, or ought to be, a highly responsible officer; he ought to keep a ledger account of the benefice, with all the receipts on one side, and on the other the expense of curates, if any; the expense of dilapidations, if any; and his own charges as sequestrator; and the balance ought to be paid to the creditor under the order of the sequestration. I would allow him the full power and control over all the moneys received, subject to the liability that he is always under to the courts.

1699. In the case of sequestration, where the powers are very large, supposing the creditor to object to this course as pointed out for the Act, supposing that the sequestrating creditor withdraws his sequestration, then the power ceases altogether?—Yes.

1700. So that to bring the matter into operation you would require either a complaint from the patron, or the archdeacon, or the rural dean, that the repairs had not been done, before the bishop could act at all, would you not?—Yes; the Act, I think, is defective in that respect in two or three places. There ought to be power, when the sequestration ceases, that the order should be taken up, and carried on without a fresh survey; there ought also to be power in a case of an analogous kind, where an incumbent asks for an order to survey that he may insure for five years; he dies before the order has become effectual, and a fresh survey, under the Act, appears to be required; it ought to be possible to take up the old survey, and finish the work as if the survey had been made for that purpose.

1701. The sequestration for repairs, or for dilapidations generally, is the general power that the bishop has put into his hands throughout the whole Act?—Yes.

1702. Supposing that, under the 12th section, the incumbent does not do the repairs, then the power is that of sequestration?—Yes; I have myself had no such case under this Act, but there must be an ultimate power. The sequestrations of which I was speaking are the sequestrations for other debts.

1703. You yourself, individually, have never put the sequestrating power in force, either in the first part of the Act or in the case of vacancy?—I think I have never had occasion to do so.

1704. Supposing that the incumbent neglects to do the repairs, has it occurred to you that there is a duty and a responsibility cast upon you?—Certainly.

1705. And supposing that the work was not done, and that the new incumbent comes in, to whom the liability attaches, have you thought whether you are exempted in your official position from that liability?—I think that the bishop is bound, according to the direction of the Act, to see the repairs done under the Act; he is holding the balance between two parties, and he has no business therefore to be lax in the way in which he administers the Act.

1706. The incumbent himself, in the case of a benefice that is full and under sequestration, appears to be divested altogether of any interferance; he is rendered a cipher, I think, with regard to the dilapidations?—Yes.

1707. Supposing an order to be made upon him to pay any sum of money in, and that he pays it, he still has no control whatever as to the repairs, has he?—An incumbent under sequestration would hardly be called upon to pay money in.

1708. Let me read a note which may, perhaps, illustrate it better. This is from a gentleman by name of Maryon Wilson, who writes from Montpelier-street, Brompton; but I think that the living was in Essex, in the diocese of Rochester. He says, "My living was sequestrated, and in June 1872 I received notice from the diocesan surveyor that, in accordance with his Lordship's order, I must pay into Queen Anne's Bounty 400*l*. That amount was paid to the treasurer in February 1873," (I suppose by this gentleman). "Since that day I can get no accounts from the surveyor, and his last communication to me was this: 'I hear that fresh dilapidations have arisen since I sent in my report in 1872, so I will make a fresh survey, and call at your house for my costs.'" I suppose that if he had not paid it, and the sequestrator had had to pay it, his creditors very likely would have come upon him in some other way; but he says, "Having paid 400*l*., I can get no account of how it isto be expended"?

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*Chairman*—continued.

—If you will allow me to say so, he does not say that he has paid it. I have never met with a clergyman, whose living was under sequestration, who would have listened for a moment to a demand for a payment on account of dilapidations; he would have answered, "The whole of the funds of the living are available, and you must look to those funds."

1709. But the point is, that when a man is in the unfortunate position of having his living sequestrated, although the money is paid in, either by the sequestrator or by his friends or by himself, he is divested by this Act of any control whatever over the expenditure of that money; and the surveyor is absolute?—I think that he would have access to the accounts of the sequestrator under the general law, and if there appeared to be irregularity in the expenditure, the sequestrator would be liable to give an account of it.

1710. Who orders the repairs?—The sequestrator.

1711. And not the surveyor?—The sequestrator does the repairs under the surveyor's order. The order of the bishop is addressed to the sequestrator, as it would be to the incumbent if there was one. I have never met a case at all analogous to that which you have mentioned, and I should think that there were but few such cases.

1712. Taking it more generally, do you still think that, looking at the large powers which a surveyor has, either the old incumbent or the new incumbent, in case of a vacancy or in case of some complaint, should have some right of choice or nomination of some other surveyor, or to meet the official surveyor?—I think that he ought to be allowed to inspect the order, and to have the same power of appeal that another incumbent would have, because it affects his own funds, and he ought therefore to have the means of redress.

1713. To whom would you make the appeal as against the bishop's decision; in the first place you would grant an appeal against the surveyor to the bishop?—The answer to that question affects the whole of the Act, and I should like to say that I think it is very desirable that the bishop should have another tribunal to which to send these cases; but I am very anxious to keep down the expense, because that is at the root of the matter; and I believe that it would be possible for the bishop to get constituted in each diocese a very satisfactory tribunal, consisting, perhaps, of the chairman of quarter sessions, or somebody who had filled a judicial office. There are always in a diocese such gentlemen who would kindly give their services. And I believe that the bishop would feel fortified by being able to send to such a body of two or three, as the case might be, all cases of appeal; there I would stop, I am not disposed to give an appeal to the courts of law, for one reason only, and that is the reason of expense.

1714. You would introduce a lay element through some official parties in the diocese?—Yes, very willingly.

1715. Has any question ever come before your Grace with reference to the Five Years' Indemnity Clause, as to whether it applies only to cases of vacancy, or whether it applies to the first part of the Act?—We have always held that it applies to both.

1716. No case has come within your diocese or jurisdiction where the surveyor has insisted upon going in again in the event of a vacancy after a certificate has been given under the first clause?—He cannot go in until the bishop sends him an order to survey, and therefore it rests with the bishop.

1717. But must not the bishop act within three months?—Yes.

1718. Then he has no discretion, has he, as to sending the order? Under the 29th Section it is directed that the bishop shall, within three months after the avoidance of any benefice, give the order, and the incumbent, or the representatives of the late incumbent, may clear themselves by pleading that?—It is "unless the late incumbent shall, under this Act, be free from all liability;" and I should hold that if a survey had taken place within five years, he would be free, and that the bishop would have within his own office the means of taking cognisance of that fact, and would certainly not send out the order; but whilst we are upon that, I may observe that the 29th section is not complete; the bishop ought to have the power of withholding the order if he knows that there is nothing to survey, which, is often the case. The incumbent of a district church in a town, who has not got a parsonage, has absolutely nothing which could be the subject of a survey; he has not the freehold of the chancel, and there is no parsonage, and the bishop ought to be allowed to exercise a discretion as to the order. In that particular point I think we have sometimes gone beyond the Act, and omitted to issue the order.

1719. Cases have been brought before the Committee in which the surveyor had neglected to make a survey for a considerable period after the vacancy; the bishop's direction is limited to three months, but no time is fixed for the surveyor to make either his inspection or report; and the representatives of an old incumbent complain that a substantial part of the dilapidations have in some cases occurred subsequent to the avoidance; do you not think that it would be an improvement if the bishop should also direct the time within which the survey should take place?—I think that that would be an improvement in the Act.

1720. Under the first part of the Act, the surveyor is able to fix the time in which the repairs should be done; but he has no such power, I think, in the case of vacancy. Under Section 31, "The report shall state what works, if any, are, in the opinion of the surveyor, needed, specifying the same in detail, and may state any special circumstances; and shall state what sum, in the opinion of the surveyor, will be required to make good the dilapidations;" and then the Statute makes the order after?—I think that if there is no power under the Act for the surveyor to determine the time required for doing repairs, there ought to be in all cases.

1721. And you would not leave it that he is to do the repairs within a limited period, without any discretion as to the extent of the repairs or the time within which they are to be carried out?—The reason for giving the discretion to the surveyor had reference to the extent of the repairs. He would say, "This could very well be done within six weeks;" or, "This could not be done under six months;" and I think that that power ought to be extended to all cases.

1722. Would you give any extension of time beyond

*Chairman*—continued.

beyond six or twelve months for the payment of the money in the case of vacant benefices?—There are two persons concerned; one has to spend the money within a certain time, and therefore the other ought to pay it.

1723. But I mean especially with regard to the new incumbent; the obligation is on the new incumbent to pay it within six months; do you not think that the bishop ought to have a discretion as to the time that he should have?—I think that that would be desirable.

1724. The new incumbent has a remedy against the representatives of the old incumbent, or against the old incumbent, if living; but the statutable obligation is to make him pay within six months, unless the bishop extended it to twelve months?—I think that more discretion should be given; and whilst I say that, I have in view all the time that it is desirable to associate somebody with the bishop, or that he should be able to send those cases to a separate tribunal, to deal with them all in a common-sense manner. Some of the things are mere routine, and might be left in the hands of the bishop; but I think he would be glad to be free of all contentious cases, and to be able to send them to another tribunal.

1725. Have you heard of complaints by the clergy that they were under an idea that they should be able to borrow money fairly from Queen Anne's Bounty to meet these cases of dilapidations if this Act was passed?—I have heard that; but, at the same time, I am prepared to say that the Governors of Queen Anne's Bounty have exercised a very wise discretion in the limit of time which they have imposed. We have had cases before us, at Queen Anne's Bounty Board, of incumbents who have had to repair their houses when they were 72 years of age; they had had their benefice for 25 years, and they had never done the repairs, and then they wanted to spread them over 25 years. That was neither more nor less than an attempt, on the part of the existing incumbent, to transfer his liability to his successor; and the Governors of Queen Anne's Bounty rightly take cognisance of that, and have some regard to the probabilities of life in estimating the number of years over which they will allow a loan to be extended. In my own diocese there was a respected clergyman who had had two or three paralytic seizures; he was utterly incapacitated for business, as I know by own eyes; his family requested I would sanction the borrowing of 900 *l.* from Queen Anne's Bounty Board for repairs on the security of the living. The whole value of the living was 300 *l.* a year. Of course that was merely transferring the liability from the existing incumbent to some future incumbent, and ought not to be entertained.

1726. Have you any suggestion to make with reference to the case of very small livings where Queen Anne's Bounty Board declined to advance from the want of sufficient security?—I know that there is before the Committee a large scheme with respect to those, and in respect to the whole subject of dilapidations; I confess that I have not considered it quite enough to give a decided opinion upon it, and I think that before it is entered upon it would have to be more widely considered than it has been yet; but, I may say that, in the long run, I believe it would be possible to adopt some plan by which



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the repairs of glebe houses, and also insurance against fire, might be undertaken by Queen Anne's Bounty Board; but at present it must be borne in mind that this Act has only been in operation for a few years, and that, consequently, the benefices which have been repaired are in a very different position from those which have not; and if I were asked to give my own opinion, I should say that it was desirable that this Act, amended, as it would be possible to amend it, should continue in operation for some time longer, so as to allow of almost the whole of the benefices having come under its operation, and then a general scheme which would put the matter under the control of Queen Anne's Bounty Board would seem to me to be feasible.

1727. In the meantime, assuming that, under the construction which this Act has had put upon it in some cases certainly the dilapidations have a very much larger scope; do you not think that some mode should be adopted, if the Act is to be enforced, by which the new incumbents of small livings might be relieved?—I should be very glad to see it. It is simply a question of funds. The truth is, that the difficulty of working this Act entirely lies in the difficulty of finding money where there is none; searching for money and not finding it.

1728. Would it be a prudent way of augmenting small livings?—It would be a very benevolent operation, and it would be simply a question of available funds. I presume that there is only one fund to which attention would be turned, and that is Queen Anne's Bounty, and I think that it would be a question for that Board whether they could open up this channel of benevolence; you could not do a greater kindness than to assist a man in putting his house in good order.

1729. Would you make it incumbent on the patron to assent in all such cases?—The patron would have no cause to dissent if his house was put in good order for nothing.

1730. The suggestion has been made that the patron might be heard, but that his absolute veto as it exists at present might with safety and benevolence be removed; does your Grace agree in that view?—I think that it should be made subject to the tribunals to which I have alluded, and made a matter of appeal. I do not think a patron ought to to say to his incumbent, "I wish to get you out, and under no circumstances will I allow you to borrow."

1731. Then could you limit the patron's power to making the objection before any tribunal, or would you continue his absolute veto as at present, against Queen Anne's Bounty Board lending at all?—I do not think that he ought to have an absolute veto.

1732. There is another question as to Clause 71, with regard to the removal of the unnecessary portions of a building; where buildings have become too large for the living, the bishop has power to sanction or authorise the removal of certain portions of them; would you make the refusal of the patron absolute there?—Throughout the Act I think that the patron should be liable to appeal; and here, certainly.

1733. Where buildings have been pulled down by a preceding incumbent, the new incumbent is relieved from the obligation of putting them up; but it has been considered by surveyors that where the buildings have tumbled down, the new incum-

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bent is not relieved from the obligation; would you give any authority to this new appellate body against the surveyor's interpretation?—I think that if a building has tumbled down it must have been because it had not been repaired, and I am not prepared to say I would give a man more favourable terms because his building has fallen down than I would give him because it has nearly fallen down.

1734. Do you think that there should be some court of appeal as regards the legal construction of what comes under the head of dilapidations, or causes of want of repair, by surveyors?—I should like to answer that in this way; that in any Bill to be brought in, I should now advise what was not possible in 1872, that is to say, an attempt to define dilapidations in a schedule. I have consulted an architect of eminence who has done a great deal of business in this way, namely, Mr. Christian, of the Ecclesiastical Commission, and he was of opinion that the time had now come when it could be done. In 1872 there was no associated body of diocesan surveyors conversant with dilapidations, and we expected (and the result proved that the expectation was true) that there would be great diversity in theory and practice; but now diocesan surveyors meet together, and have endeavoured to come to an understanding; and the result of even this short experience has been, that a gentleman who probably would not have advised us, in 1872, to attempt to define dilapidations, says that he would assist us in doing so in 1876, and he thinks that it is feasible; that would be a great improvement. Supposing that such a schedule existed, and supposing that there was some difficulty of interpreting under the schedule itself, I would give to the tribunal that I have been supposing a general power in all matters of appeal. I would let the appeal be against the surveyor in respect of a matter affecting his own profession.

1735. How would your Grace deal with the costs in that case?—I would keep them as low as possible, and the tribunal should be formed with a view to having an equitable decision without expensive proceedings; and then, I think, that the costs might be made to follow the event in the case of an appeal.

1736. That is to say, supposing that the appellant was altogether right and the surveyor was altogether wrong, the appellant ought not to pay the expenses?—The cause is not between the appellant and the surveyor; it is between the appellant and the respondent who is another incumbent. And there is this to be said, that the other incumbent had nothing to do with the choice of the surveyor, and if an appeal is made against the surveyor a third party, viz., the respondent, might have to pay the costs.

1737. But where there is no other incumbent; where the appeal is under the first portion of the Act, what would you do then with regard to costs?—There is only one party who could pay them.

1738. Who is that, the successful appellant?—I am afraid there is no other resource but the appellant.

1739. Take the case which the Committee has had brought before them of a sanitary authority having directed the destruction of buildings for sanitary purposes, which were admitted to be of no benefit to the living and the erection of other sanitary buildings at a distance from the glebe; the surveyor orders their reconstruction and charges the amount to the man; what appeal would you give there?—I presume that the questions point at making the surveyor liable. That might work in that particular case, but if a surveyor was liable for costs in those cases, we should meet in an aggravated form the whole difficulty of getting good surveyors for the fees now paid.

1740. Unless you altered the Act allowing the party who is charged to have a surveyor of his own to meet the diocesan surveyor, do you not think that the man charged should have the right of being heard?—Under the Act at present, in the case of an appeal, probably the practice is general that the bishop asks the appellant whether he would desire another surveyor to be called in, and I have found in almost every case that they have refused.

1741. But that other surveyor is not a surveyor nominated by the incumbent himself but nominated by the bishop?—He is nominated by the bishop, that the bishop may have a proper assessor to determine a question beyond his own knowledge.

1742. As a rule, where that is the case, the bishop generally calls in another surveyor, does he not, either in the same diocese or in an adjoining diocese?—That would not be my practice; I should call in a person in my confidence who lives in London.

1743. Then all his expenses have to be paid, have they not?—I should arrange that the appellant would not have to pay travelling expenses.

1744. Assuming the Act to be continued in principle with alterations, have you any suggestion to make by which an incumbent might be directly represented by a surveyor of his own choice, in the same way as a man would choose his own doctor or his own lawyer?—The old system was that there were two surveyors who met and discussed the matter, and the opinion seemed to be general that it was highly desirable to have one surveyor, in order to save costs, and that he should be an official person. It is all an affair of costs, as it appears to me. I do not see any harm in having two surveyors, except that you must then have a third person in case of divergence, and he must be paid too. If you have two valuers in a case of dispute, you must have an umpire, I think.

1745. You have heard complaints about costs under this very system, have you not?—Yes, no doubt, and in some cases just complaint.

1746. Do you think that the old system was more expensive than the present system?—The difference would be extremely small.

1747. Was not a great objection to the old system, the want of control of any diocesan authority as to the expenditure of the money?—That was the greatest objection.

1748. Supposing that difficulty to be removed, do you see any reason why we should not return to the old system of each party, one having to pay and the other to receive, or being interested at all events in receiving, choosing their own surveyors to settle the amount, especially if what you have suggested before, viz., a schedule of dilapidations, was settled?—I do not believe on the whole that there are complaints against the justice of the valuations under the present system; and so far as I am at present advised, I should like to see it adhered to.

1749. Let me venture to call your Grace's attention

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attention to one complaint that came this morning (not from your diocese), where the complainant is a new incumbent who has too much money awarded to him: "I consider that the following facts connected with the working of the Ecclesiastical Dilapidations Act, 1871, will be of service to the Committee now sitting, and I place them at your disposal. My immediate predecessor held this living for about eighteen months, and under the Act received from his predecessor 65 *l.* 12 *s.* 7 *d.* after 17 or 18 years' incumbency. My predecessor is ordered to pay me 248 *l.* as against 65 *l.* The surveyor, in his report, states that the walls on the glebe lands, of which by measurement there are nearly four miles, are in some parts in very bad condition. This is perfectly true, and yet my predecessor was only adjudged the sum I have named. My predecessor failed to secure a certificate, in consequence of bankruptcy from the surveyor, or I should have had to bear the burden, which I feel presses very hardly indeed upon my immediate predecessor. I beg to enclose copies of charges, the bishop's secretary and registrar's charges, and the form of the report." The date of the new order is the 4th of May 1876, and the other is eighteen months previously. The new incumbent says at the same time, that the sum which he has to pay for surveyor's charges is 13 *l.* 11 *s.* 8 *d.* Does there not seem to be an injustice in neither the one nor the other having any voice whatever in fixing the amount?—No doubt those two surveyors surveyed upon two different principles; and what was said just now about the schedule would have the effect of making that kind of error more and more unlikely.

1750. Merely putting it with regard to justice or injustice, if the late incumbent had been able to have appointed a surveyor himself, or could have insisted upon the official surveyor hearing his evidence that only 18 months previously by an official authority he had received that same sum, and nothing had occurred to increase the dilapidations in the meantime, he would have had a chance of having more justice done to him, would he not?—Yes; but even now I do not think that a case is made out for altering the principle throughout, and having two surveyors in every case.

1751. You do not think that if the difficulty is met, of seeing that the money that is awarded is spent in some shape or other on the living, the old practice of each person choosing a party by whom he wished to act could be beneficially adopted?—I do not. Perhaps this is a good point for mentioning that, on the 22nd January 1875, I convened a meeting, composed of representatives from every diocese which would send a representative, on the subject of these dilapidations, and the subject was thoroughly well discussed by some very able persons. They were all clergymen. The mode in which I got the meeting together was this: I asked the bishop in each case to give me the address of some one thoroughly conversant with the matter, and then I invited all those whom the bishop named. I have here a sort of rough note of the various alterations which they suggested, and I think I may venture to say that not one of them suggested a complete alteration of the present system, and a departure from the system of having diocesan surveyors. I will not say that all these



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alterations were adopted by voting in this conference, but these were the objections which were taken to the present Act. In Clause 8, a very minute alteration was proposed. After the words "assembled at a meeting convened for that purpose," it was proposed to put in "by the bishop;" that is a mere verbal matter. It was also, on the same clause, suggested that the appointment of the surveyor should be registered in the registry of the diocese; that is also of very little moment. Then, in Clause 10, the convener of the meeting is to be mentioned after the words "that purpose;" "by the bishop." Then, after Clause 11, it was proposed to provide that the surveyor may act as architect, except when forbidden by the terms of his appointment as surveyor so to do; it ought to be clearly understood at first whether he may act as architect or not. Upon Clause 15 I think that there was a strong opinion that dilapidations ought to be distinguished into, 1st, inevitable waste, and then, ordinary wear and tear. Of course there is a time at which a building that was looked after ever so well would collapse by the working of the laws of nature; a brick will not last for ever, and so on; and some of the difference of practice, it was held, had arisen from one surveyor taking the ground that a house must be made equal to a new house, and another taking the ground that a house ought to be repaired so as to be good enough for a clergyman and gentleman to live in. Then on Clause 16, instead of "The bishop may, if he shall think fit, at the expense of the party objecting, direct a second report," it is proposed to strike out the words "direct a second report," and to substitute "issue a commission as under the Incumbents Resignation Act." That is a short way of providing that the bishop ought to have a commission to try it. Then on Clause 17, which contain the provisions about borrowing, it was said that when the works are classified into inevitable waste and neglect, there should be larger power for the borrowing in the case of inevitable waste; that a man should be able to do that whether he is an old incumbent or not. In Clause 21, power should be given to the sequestrator to borrow. There might be very little surplus money available to the sequestrator, and it may be very desirable that the repair should be finished out of hand; and unless he can borrow he cannot do them. On Clause 25, it was proposed to include the houses of minor canons, which is a small matter. On Clause 29, it was proposed to give power to dispense with surveying when there are no buildings, and also when a survey has been recently made. I think I have already mentioned those points. In Clause 38, it was proposed to include in the borrowing powers loans for drainage. Under Clause 42 there might be cases where it is desirable that a fresh survey should be ordered. On Clause 44, line 6, it was proposed to strike out "when countersigned by the bishop," and the same in Clause 45. In Clause 54, on the subject of insurance, it was thought that there ought to be a power at the end of the clause to determine the value of the buildings. On Clause 55, it was agreed that from "an incumbent shall cause," down to "become payable," should be wholly struck out, the exhibition of the receipt of the insurance being a vexatious thing; and it is much better out, I think. In Clause 58, after the words "for the

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the surveyor to inspect," it is proposed to insert the words, "and report on." In Clause 59, it was proposed that the counterpart leases that are deposited with the Ecclesiastical Commissioners for England should be open to the inspection of the surveyor. I think that is rather important. The words were put in "which may be inspected by the diocesan surveyor." Then, in Clause 66, it was proposed to give power to the bishop to appoint a deputy surveyor. In Clause 67, it was proposed to give power to a magistrate to issue an order to enter a glebe house for the purpose of surveying in the event of barring out. In Clause 71, it was proposed to include after "any building" in the first line, the words "for which the incumbent is liable for dilapidations." Then it was proposed to add a schedule at the end defining what dilapidations were. The result of that meeting was that the alterations that I have just mentioned were got together, and I consulted two or three people about them upon whose judgment I could rely, and it seemed that whilst there were many improvements suggested that might have been introduced into the Bill in its passing through the Committee, it was rather difficult to constitute a Bill of them; they did not seem to have quite backbone enough for a Bill; and it was known that the Convocation of the Province of Canterbury were going to take up the subject last year; and partly in deference to that body, and partly in consequence of the smallness of the alterations that were suggested, the matter went no further at that time. When the meeting was called, it had been our intention to take steps to procure an amending Act; but it is worthy of notice, I think, to take us back to the point from which I started, that in their report there is no suggestion from any quarter of any complete alteration in the manner of taking the survey, or of reverting to the old system of having two surveyors in each case.

1752. And there was no suggestion that the parochial clergy should have any voice in the choice of the official surveyor?—No, I think there was none. With regard to that point, when the Bill was first drawn, it was thought that the rural deans were, on the whole, a very good body to appoint the surveyor. A general election by the whole of the clergy would be inexpedient. I think, and not at all likely to secure the best men. All the rural deans are beneficed clergy; they are scattered all over the diocese, and I believe they would take great pains to make a good choice. If it were desired that there should be a veto upon the surveyor's appointment on the part of the clergy, I do not see any particular objection to it.

1753. Under the 58th Section, with regard to ecclesiastical property out on lease, the lessee who is under covenant to repair is not at all bound by this Act, and the official surveyor of a diocese may take, and has taken in some cases that have come before the Committee, a different view as to the liability for dilapidations; so that, on a lease falling in, the existing incumbent might be liable to a large sum which the lessee created under the lease by a former incumbent is under no obligation to pay. The case that has come before the Committee has been this: that the affairs of the last life in the lease being administered by the Court of Chancery, the official surveyor has refused to admit the surveyor on the part of the representatives of the lessee; and the consequence has been that they have rejected his report altogether, which has become binding upon the incumbent, and that the incumbent has then to carry his case to the Court of Chancery, and has in the end had to pay some 150 *l.* or 160 *l.*, for which he could in no possible way have been liable, and which his solicitor, who came here, intimated that he might have avoided if he could have got a surveyor to have met the diocesan surveyor. Has your Grace's attention been directed to that point?—I think that was hinted at by the suggestion that there ought to be a power to inspect the lease to ascertain whether the protection was sufficient, and that perhaps there might be a power given to the diocesan surveyor to survey if the covenants were not such as to secure the repairs.

*Chairman*—continued.

1754. That is to say, that the diocesan surveyor's report should be in accordance with the covenants, and not in accordance with the general obligation?—Yes; that he ought to have power to take cognisance of the covenants.

Mr. *Beresford Hope*.

1755. I gather that, without commiting yourself to it, your Grace is generally favourable to something like a system of insurance?—I should like to give it a very favourable consideration, but it is a very vast thing, and should be gone into warily, and with a very full understanding of all its difficulty.

1756. And you think that the time has hardly come for that yet, until the parsonages all over England have been put into a better state?—I am disposed to think that after that it would be done with advantage.

1757. Does your Grace think that the present Act is too stringent in making everything that the surveyor may include in his report compulsory?—I would guard against that now by having a schedule of dilapidations, and it would be a matter of appeal if the surveyor had taken some things which were not in the schedule.

1758. It has come out before the Committee that more clergymen might be willing to put themselves under the voluntary provisions of the Act if they could call in the surveyor, and if, having received his report, and having paid for his report, they might have some discretion, either fettered or unfettered, as to whether they would go further or not; how do you think that would work?—That was much considered at the time of the passing of the Act, but I am now disposed to take the view that it would be better to allow the incumbent to have, at his own expense, the survey made; and, if he found that it was too heavy, to abandon it.

1759. And the bishop, or some other tribunal, might have the power which at present they do not appear to possess, of striking out items which seem vexatious on the part of the surveyor?—I would not give that power to the bishop without the advice of another surveyor. The bishop, of course, has not technical knowledge, and he would not like to undertake to say that this or that was not necessary.

1760. It has come out before us that articles like the staples of doors, and other mere trifles, have been objected to by fastidious surveyors, when really it was involving people in unnecessary

Mr. *Beresford Hope*—continued.

cessary expense; are there not certain items which may be matters of common sense, and which you would go into without incurring the expense of another surveyor?—I think that that might be guarded against by the schedule, and I would attempt it.

1761. Do you think that a schedule could be drawn up which would define all the little items which make up a house and fixtures?—In sufficiently general terms it could. As to the application of those general terms, I would give power to some tribunal, under advice, to hear any appeal upon the schedule.

1762. What do you think of the suggestion that has been thrown out from various quarters that the surveyorship should be a qualification rather than an office, and that instead of having one or three or four surveyors for each diocese, there should be a list of qualified men from whom the choice might be made?—That is entirely a question of expense; if it could be done as cheaply in that way as in the other, I think that would be as good a way; but the surveyors for the most part are men who make very little by these dilapidations; complaints are made on the one side against the surveyors, but, on the other hand, the surveyors complain very much of the professional charges to which they have to submit; but they take the office because they are secure of a certain share of other business, and they have an official position; they are mentioned amongst the officers of the diocese, and in indirect ways it helps them in their profession. That would not apply, of course, if you sent all this business to great leading surveyors, and said nothing about their fees; the bills they sent in would be very much greater than they are at present.

1763. My question was pointing the other way, in favour of having a larger list, and having the respectable surveyors in the different country towns admitted as surveyors under the Act, so that a man could call in his next neighbour, and then by the relaxation of Clause 11 which you pointed out, he would have a chance of being employed as architect for the job?—It is simply, as I have already stated, a question of cost. It would be quite possible to nominate a dozen persons in a diocese who would be perfectly competent to do the work of a surveyor, especially if they had the guidance of a schedule, because that makes a great difference; but whether they would do it for the fees that the surveyors at present charge is more than I am quite sure of.

1764. No doubt it is your opinion that having only one surveyor for the large diocese of Winchester, must impose a great deal of trouble and delay?—I should consider that quite objectionable. I should consider that a large diocese ought to have two or three surveyors at the least; and that in choosing them the place at which they happened to be resident should be considered.

1765. You consider that a certain minimum number should be obligatory in the Act, and not as it is at present, that the rural dean should have absolute discretion of only electing one for the whole diocese, which discretion they have in certain cases exercised?—It was intended to leave these bodies free; but if I am asked whether a gentleman living in Buckingham-street, Strand, could conveniently act for the whole diocese of Winchester, I answer that I do not think that he could.

Mr. *Beresford Hope*—continued.

Mr. *Dodds*.

1766. Perhaps your Grace, as to that point, would take a case near home, the case of the surveyor of the Diocese of Ripon, who lives in Parliament-street; surely anything more inconvenient cannot be imagined?—I can speak best from my experience of my own diocese, and I found that after the first election the clergy came to the next election with a very clear impression that it was desirable to have at least three surveyors, and placed at different points of the diocese.

Mr. *Beresford Hope*.

1767. Though your Grace has just stated that a surveyorship under the present system is rather taken up as a badge of distinction by the surveyor, do you not think that the architect in Buckingham-street, Strand, or anywhere else, must add on to the fees, and must charge travelling expenses?—He is bound by the Table, and I presume that nobody would allow him to charge travelling expenses from London to Ripon, to begin with.

1768. Will your Grace kindly look at the Table of Fees charged, and see how many cases there are in which travelling expenses are additional?—The travelling expenses are in many cases additional; but I merely say that I think that to allow travelling expenses from London to Ripon would be quite out of the question.

1769. Travelling expenses in Ripon are, I observe, inclusive; but the scale goes up to eight guineas there; is not that only another way of saying that a surveyor travelling from London to Ripon must have his railway fare paid for him by the poor incumbent?—I confess that I think the surveyors should be localised for the convenience of the diocese.

1770. And the number increased?—I see no objection to increasing the number, the object being so to dispose the work as to make it an inducement to a surveyor to undertake it at small charges.

1771. And in so doing, would you not give more discretion than is at present given to the incumbent to call in a man in whom he has confidence, and who has proved to be worthy of the confidence by his being one of the qualified surveyors of the diocese?—If there is to be only one surveyor acting between two parties I would not give that power, because it would enable one of the parties to suggest a man who would perhaps favourably consider his case.

1772. But would you allow the two parties between them to select a man?—There would be no objection to that. The only reason for giving a sort of power to the bishop to arrange the districts at present is that there may be no room for partiality; but if both parties agreed on a surveyor there would be no reason, nor could there be any reason, for not increasing the number of surveyors to four or six, or the like, the only limit being, as I said, economy in working for the clergy.

1773. Do you think that the Act is sufficiently explicit, as it is, upon the repairs which the surveyor may call upon the rector to make in the chancel?—The Act at present is not explicit enough

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enough all through upon the subject of repairs, for want of that schedule which we have mentioned so often; and that leads to the question of what repairs should be done being made the subject of appeal. I can fancy a great many questions arising in connection with the chancel. The Ecclesiastical Commissioners have taken the view that they are liable for the decent repair of their chancels, but that they are not liable for any decoration whatever.

1774. A case came before us in which the surveyor called upon a rector to pull down a reredos which had been up some 150 years, and to restore an east window; would you consider that an excessive exercise of his rights?—I should consider that that was an excess of his power under the Act. It is rather parallel to a case that came under my notice. I found that in a survey the surveyor had judged a certain nursery to be unnecessary, and ordered it to be pulled down, and gave an estimate of 30*l.* or 35*l.* for putting the roof straight after it had been pulled down. I ruled, rightly or wrongly, but after taking advice, that this was *ultra vires*, and that he had no power to say what a house ought to be, but simply to say whether it was in a good state of repair.

1775. Then you think that altogether too much elbow room has been given to the fancies of surveyors under the Act?—I do not think that they have had very much elbow room with us.

1776. It has not come under your cognisance that there has been considerable complaint among the clergy of the surveyors going in with an ideal standard of their own of what the soundness and perfectness of the house should be?—I should fear from my little experience that there must be many other cases where that is so.

1777. Have you at all thought whether the impropriator should be brought under the Act with regard to the repairs of his chancel?—It seems clear that he ought to be; I do not see why he should not be liable.

1778. You would extend the Act to taking in lay rectors, with respect to their chancels?—When we first went for the Act we left the laity out altogether, and, I think, on the motion of my Lord Portsmouth, the patron's name was inserted in that clause which gave him power to complain. We left out the laity, because we wanted the Act to pass, and we did not know how far we could get these powers. But there is no doubt at all that if the laity are let in with their powers of complaint and objection, they ought to come in for their liabilities too, and therefore the impropriators ought to be liable.

1779. The change of personage is not so marked as when there is a change of incumbent; should the liability of the impropriator operate upon the decease of the impropriator, or at the end of a fixed term of years?—I think that the Act could be greatly improved by giving power to intervene for a survey more readily. I should myself like to see a periodical survey of benefices, and in that case the question would arise whenever the periodical survey took place.

1780. Do you mean that to apply to parsonages and to every building upon the glebe, or only to the chancels?—To every building, and then the chancels would be included.

1781. You mean upon the avoidance of the benefice?—I think it must be on the avoidance of the benefice, because then two parties with separate interest are in the field.

Mr. *Dodds*.

1782. Does your Grace see any objection to there being an unlimited number of surveyors in each diocese being competent persons?—I see no objection except that of cost. If it can be found that with a very low scale of fees a considerable number of surveyors in the diocese have expressed themselves willing to undertake the business, I think it might be well to construct a list of the qualified surveyors in the diocese who would do the work on those terms; and I see no reasons why they should not do it.

1783. Any one of whom might be selected by the parties interested, or by the rural dean?—I would leave in the hands of some central authority, for the sake of impartiality, the power to send a surveyor over a certain district; but upon agreement with the parties who might wish to have one surveyor who was not in the district, I would allow that one to be sent.

1784. Taking your Grace's own diocese, I find that there are three surveyors at present; one in York, one in Hull, and one in Whitby, I think; would there be any objection to have one, say at Middlesbro'; one of the many competent persons that are to be found there, who might be called in in that immediate locality?—Or say in Sheffield, which is a stronger case still; I do not see any objection to that at all. In our diocese we have extended the number from two to three, and I am not prepared to say that on the next meeting we may not go further.

1785. I see your Grace sets the best example; for it is only the diocese of York which has three?—Yes; and I am not prepared to say that we should not have four, but we should rather place the fourth at Sheffield than at Middlesbro'.

1786. Is there any good reason why every competent surveyor in the diocese should not be placed upon that list if he chooses?—I do not see any reason, in principle, why he should not; but I would have some discretion as to selecting a man for placing him on the list.

1787. But you see no objection to having a very comprehensive list, leaving the selection to be made so as to avoid any person being chosen who had any personal interest?—The outgoing incumbent should not have power to call in the man who had built his house, because he had built it, or the like; subject to that, I do not see any objection to an extension of the number.

1788. Your Grace has referred to the question of cost; is it not to be assumed that the cost will be less if a man is called in who is living in the immediate locality, than if he is brought either from Whitby or York to Middlesbro', for instance?—I must observe that when we first had this competition, some of the principal qualified persons in the diocese did not compete.

1789. But assuming that they were willing to compete, does your Grace see any objection?—I see no objection on the score of numbers.

1790. Does it not occur to your Grace that a still greater objection to the limited number who are resident at a distance arises on the score of delay which necessarily takes place, and which must be an important element. If in the diocese of

Mr. *Dodds*—continued.

of Ripon, for instance, there is only one surveyor, and that a gentleman residing in Parliament-street, Westminster, there must be delay, as compared with a competent person resident within a few miles of the particular parsonage to be surveyed, must there not?—I do not quite follow that, I confess; I do not quite admit it.

1791. Would it not tend to obviate delay if a number of local surveyors was appointed?—I do not think that at present with three we have any unreasonable delay.

1792. As a general principle, in the case of the diocese of Ripon for instance, has there not been an inevitable tendency to delay where you have but one surveyor resident in London, as compared with a number of competent surveyors resident in the diocese?—I think that a very moderate number would suffice to guard against delay; the result of the change would be to place upon the list some prominent surveyors in the diocese who would have a great deal of other business, and they might happen to be just as busy, and the man put in charge of the work in a small area might happen to be one of the busiest surveyors of the whole.

1793. But, *cæteris paribus*, surely a man living in the diocese would be less likely to occasion delay than a man living at a distance?—Certainly.

1794. Is your Grace aware that in the diocese of Durham there is only one surveyor, Mr. Johnson?—The having only one surveyor seems objectionable for the reasons that have been mentioned.

1795. Your Grace is, perhaps, aware that there is only one official surveyor in the diocese of Durham?—I am not sure that I did know it before.

1796. A list is published, showing that Mr. Johnson, of Newcastle, is the only official surveyor of the diocese of Durham?—Mr. Johnson is an architect of high repute and of much occupation, and of course it would follow that he was sometimes engaged for a week or two in advance.

1797. I quite admit Mr. Johnson's high position and his suitability for the appointment, but the district for which he is appointed extends from Berwick-upon-Tweed to Darlington, and there are a great many other competent persons resident within the same diocese who, as it appears to me, would be very suitable to be placed upon the list; does your Grace agree in that opinion?—I can see no objection to it.

1798. Would it not be an advantage to have a few more names placed upon the list in the diocese of Durham?—I think it would; but I am not disposed, without further consideration, to adopt a principle that the list might be increased, so as to include every respectable surveyor.

1799. Does any objection to that occur to your Grace?—I do not know that the clergy would have the same confidence in the working of the Act that they now have. I would increase the list, so as to include a number quite sufficient for all purposes, but I think that it would leave it an element of uncertainty in the mode of making the survey if the list was extended very far.

1800. I understand we are assembled here because the clergy have not confidence in the matter as it is administered at present; is not that so?—It does not follow that it would be desirable



Mr. *Dodds*—continued.



to make alterations in which they likewise would not have confidence.

1801. Certainly not; I wish to ascertain from your Grace whether, in your opinion, there is any good ground for objecting to this: the surveyor of the dean and chapter of Durham, for instance, is not upon the list; they would have full confidence in him, would they not?—Yes; but I merely say that to increase the list, so as to include every qualified surveyor, who might be a respectable man and trusted by his neighbours, would not, so far as I know, increase the confidence of the clergy in the working of the thing, because they might suspect that there was not an uniformity of system.

1802. It seems to me exceedingly desirable that every competent person who chooses should be placed upon the list, but if there be any real ground of objection to that, I should not support it; if your Grace would tell me of any objection which suggests itself to you, I should not support such a proposition?—I cannot carry it further than these two points: the one, that I think the scale of charges must be kept low, and, in order to do so, you must ensure a man's having a certain measure of business, and that he shall have a certain distinction as being the diocesan surveyor; and as to the other point, I think that one great element of complaint is the want of uniformity in the mode of appointing the surveyor, and that the clergy would prefer having a certain number of responsible surveyors who might be supposed to have mastered the difficult questions.

1803. As a matter of fact, some of the questions which I had intended putting to your Grace upon that point have already been anticipated by the Chairman and the honourable Member for the University of Cambridge; but I see that this little book which I hold in my hand, which is published by the Ecclesiastical Surveyors' Assotion, states that the general object of the association is to promote uniformity of practice in carrying out the Act. Your Grace has suggested that a definition of dilapidations should be placed in any new Act by way of schedule; does it not seem desirable that that schedule of dilapidations should be settled by lawyers rather than by surveyors; is not "What is dilapidations?" a legal question?—I think that it should be settled by Parliament itself.

1804. Should it not be settled first of all by gentlemen like the gentleman who was called before us at our last sitting, namely, Dr. Tristram?—I am informed that that there has been great difficulty in fixing what legal dilapidations were in the cases that have come before courts of law.

1805. But surely, if that difficulty exists in the case of lawyers, it must exist to a still greater degree in the case of surveyors?—I should be very content with a schedule which had stood the sifting of the two Houses of Parliament, whoever initiated it.

1806. One of the questions which I intended to ask your Grace is, whether it would not be desirable that some definition of dilapidation should be laid down, and a copy sent to each surveyor who is appointed; of course that would follow if it is put in the Act?—Yes; I go beyond the word definition; I should like to see a very long directory schedule.



1807. Such

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Mr. *Dodds*—continued.

1807. Such a schedule, no doubt, would be very useful; but it should be settled by lawyers, should it not, in the first place, and not by surveyors?—I have great confidence in Parliament; I do not care who brings it in, but I think that it would come out a very workable schedule.

1808. The subject of insurance has been mentioned; is your Grace acquainted with the provisions of the Bill introduced into the House of Lords by Lord Egerton in 1872?—Generally, I am. I think I was on the Committee to which that Bill was referred.

1809. And I think your Grace has already expressed an opinion that it is desirable that there should be more uniformity and a better system of insuring parsonage houses and ecclesiastical buildings generally?—I think that now, so far as I gather, this Committee has before it a large scheme which would embrace fire insurance.

1810. The scheme suggested by the Bishop of Peterborough?—That is what I have heard. The chairman was kind enough to put it at my disposal a few minutes ago, and I think that that would be the best mode of treating it. For one thing it would obviate any question that might arise about Queen Anne's Bounty being turned into an opposition fire office.

1811. I gather that your Grace objects to the provision in the existing law with regard to the insurance and the production of those receipts?—I think that that is vexatious and useless.

1812. Your Grace mentioned the power to borrow money for drainage purposes; does not that power exist already under the Drainage Acts?—It does; but I do not think Queen Anne's Bounty has the power to lend for the purpose.

Mr. *Monk.*

1813. Is it not notorious that the surveyor's fees which can be taken under this Act are generally much less than those which the surveyors charge in their ordinary practice?—Here is a bill in which 13 *l.* and a few shillings is charged for three days and three-quarter's work, and for writing certain reports, and for travelling to the place. I should imagine that a surveyor of the first class to whom a private gentleman went would not do that work for anything like the same amount of money.

1814. Has your Grace heard it stated that the fees are not much more than half of what surveyors usually charge?—I should not be surprised to hear that that was so.

1815. Do you not think that this is a sufficient reason for not appointing an indefinite number of surveyors?—I think that the two cases hang together; that it is desirable to have several surveyors, but that it is desirable to have the low scale of fees. At present the surveys are done at less than the market value of surveyors' work, because people like the distinction of being diocesan surveyors. The more that distinction is lowered and diluted, the more indisposed will they be to take work at an inadequate remuneration.

1816. So that, in point of fact, you think that the best surveyors would not desire to be placed upon the list, if they found that all, or nearly all, the competent surveyors in the diocese were to be placed upon the same list?—We found in our diocese that the most eminent surveyors did not compete in the first instance, because I think they had an idea that the scale of fees would be low.

Mr. *Monk*—continued.

1817. Does your Grace think it desirable that dilapidations should be placed under two classes, one in respect of wilful neglect or waste on the part of the incumbent, and the other in reference to dilapidations arising from defective construction, settlement of the walls, or the natural decay of the structure; so that Class 1 might be a personal charge on the incumbent, and Class 2 a charge upon the benefice?—I think that that principle would be equitable. It has been recommended, as I have already stated, by the gentlemen who met as representatives of the dioceses. A man should be responsible for the fair wear and tear of the house during his incumbency, but he ought, perhaps, not to be responsible for the share of that insensible waste which arises upon any building.

1818. Would you recommend that such a provision should be inserted in any amending Act, though it is perhaps going rather beyond the powers of the Committee to enter into that subject?—The question seems to apply rather to the borrowing powers. It would have to be an instruction to Queen Anne's Bounty, and no doubt Parliament would hesitate before it would give any minute instructions to a public as to how it was to dispose of its money; but some direction might be given, I think, with advantage.

1819. Would your Grace state to the Committee the reason why the archbishops and the Lord Chancellor did not frame an uniform Table of fees for all the dioceses?—I should be glad to state that. An inspection of this Paper, which has been put into my hands, will show that the greatest diversity of principle prevails in the dioceses, not merely as to what the fees shall be, but as to the very mode and principle of assessing the fees. In some cases the payment takes place in respect of each particular Act of work; in other cases there is an *ad valorem* principle, and in one or two cases a principle which I am not prepared to defend, the large benefices paying more in proportion than the small ones do. When the archbishops and the Lord Chancellor, and others concerned, had put upon them by Parliament the duty of fixing the scale of fees, it did not appear so clear that they had the duty put upon them of fixing upon what principle the fees should be assessed; and the practical result would have been that, whatever principle was adopted, about half the dioceses, in England at least, would have been left out, and they would have had cause to complain, because we should have been not merely fixing the fees, but we should have been overriding them in what they deliberately thought to be the best principle of assessing the fees. If we had adopted an *ad valorem* scale, all those dioceses which had decided upon working by the job would have objected to what we had done; and if we had objected to the other system, the diocese of Ripon, which likes taxing the large benefices for the small ones, would have ground to complain. Therefore we deliberately declined to do what Parliament gave us the power to do.

1820. The archbishop, I believe, cannot now exercise this power under the Act of 1872?—The

Mr. *Monk*—continued.

The original Act has run out, and I think that there has been no renewal of it.

1821. Does your Grace think it desirable that further power should be given to those high officials to frame a Table of Fees on any distinct principle?—Seeing that the dioceses have such very different principles, I am now disposed to leave it alone.

1822. Are you aware of any objections having been made to Clause 66, which obliges a surveyor to adopt the acts and report of his predecessor?—I have never heard a complaint of that. We have had a removal from office; and that removal from office took place under curious circumstances. The surveyor was allowed to resign; but it was merely because we could not get the work out of his hands.

Mr. *Beresford Hope.*

1823. Do you mean that some principle occurred which bothered him, and which he could not work out?—No; he was a young man, and I think that the responsibility of his office bothered him; we could not get him to move.

Mr. *Monk.*

1824. His successor, however, was bound by his acts and by his report under this clause?—Yes.

1825. But no complaints have reached your Grace upon that point?—No.

1826. There is a case which the Chairman mentioned to-day, in which the report of a former surveyor was apparently based upon a different principle from that of his successor?—But there was an interval of a year and a half in that case; it might happen to be so.

1827. Would it not be as well to allow a new surveyor to give a modified approval of his predecessor's report; is it fair upon a new surveyor that he should be called upon to adopt the report of his predecessor?—I am afraid that I have nothing to say upon that point; I really have not considered it.

1828. Have any instances arisen in your diocese in which the incumbent has refused to allow the surveyor to enter the premises and examine?—I think none; but it is plain, from the proposals of the meeting of 22nd January 1875, that such cases have arisen elsewhere; because it was suggested there that there should be a power given to the surveyor to enter with a magistrate's order in spite of the incumbent.

1829. And you think that it is desirable that a power should be given to the surveyor to enter with a magistrate's order, in spite of the incumbent?—There ought to be a power to carry out the law.

Mr. *Freshfield.*

1830. I think that your Grace was the author of the scheme upon which the Act of 1871 proceeded; or, at all events, your Grace adopted it, and brought in the Bill in the House of Lords?—I am very glad that that question has been asked, because I should be sorry to bear, although I am often made to bear, the responsibility of the whole of this Bill. The fact is, that there were several previous Bills, the first of which, I think, was brought in by the present Bishop of London when he was Bishop of Lincoln; and it had the chief features of this Bill embodied in it. Both the Convocation of Canterbury and the Convocation of York adopted all the main principles of

Mr. *Freshfield*—continued.

this Bill, and during the time that it was being carried through Parliament I had the assistance of a Committee of the Lower House of the Province of York always available for me; and some Members of the Lower House of the Province of Canterbury rendered great assistance too. I regard it, therefore, as my Bill only in this sense, that I carried it through Parliament.

1831. The object of the measure was to supply a more convenient and less expensive system of inspection of ecclesiastical buildings, with a view to improving their condition and keeping them in better condition, was it not?—Yes; the evil was this: that there was a system of valuing dilapidations, but not the slightest security that the money would be wisely expended, and not even a security that it would be expended upon dilapidations at all. It was necessary to secure, in the first place, a complete valuation, and, in the next place, a proper application of the money. Those were the two objects.

1832. I collect from your Grace, that you are not altogether dissatisfied with the working of the Act; you think that it has been effectual up to a certain point, at all events?—I think so; and I think that, on the whole, in spite of numerous complaints, the great mass of the clergy consider that it was necessary that something should be done, and that they would not like to see the Act wholly repealed, imperfect though it may happen to be.

1833. I think that your Grace has expressed an opinion that some definite principle of valuation should be laid down, either in an amending Act, or in some other way, upon which the surveyor's valuation should proceed?—Yes; many people pressed that it should be done when the Bill was before Parliament, and the only reason why it was not done was that the law of dilapidations, and what constituted dilapidations, was very little understood, and it was thought desirable to wait a little.

1834. Will your Grace allow me to ask you whether you have a conception in your own mind of the principle upon which a surveyor ought to survey dilapidations under this Act?—I do not know that my answer would be worth much; but my notion is that the outgoing incumbent should be expected to put the house into a fair condition as a house of residence. I do not think that the surveyor ought to carry it so far as that he should expect the house to be made in all respects equal to new by the person who has only occupied it perhaps for 10 or 15 years.

1835. Applying that principle, the surveyor never would direct the house and buildings to be put in a condition which would make them permanently stable; he would only correct temporary defects?—A fact which struck me very much might perhaps be of value to the Committee, and it will partly answer that question; that was an episcopal house, and the valuation of dilapidations upon it was of very considerable amount. The incoming bishop said to the architect: "Now then, you shall execute all these repairs to the extent of this valuation, and then you shall give me the certificate;" the architect replied, "I cannot give you a certificate, though I should execute the repairs up to the amount assessed for dilapidations;" and being asked why, he said: "Here is a great beam across your

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dining-room, and it is in a bad state; by a little repair of the ends of it, I can make it fit to last for 20 or 30 years; but I will not undertake to give you a certificate that the house is in thorough repair, unless you take the beam out; that is the same all over the house, and consequently I should require a much larger sum to be expended before I could certify that the house was in a perfect state of repair."

1836. Will your Grace allow me to ask what was done in that case; was the beam taken out?—The bishop decided upon spending all the money, and doing without the certificate; he was advised by the architect so to do.

1837. Then from what your Grace has stated, it results that the present law of 1871 is an ameliorating measure, and not a measure to place the ecclesiastical buildings in a permanent condition of stability?—The law should deal with the property of the Church very much as any great owner of house property would deal with house property in London; he would put it all in good repair, and if he found that there was any danger of a house coming to ruin for want of a certain repair or renewal, he would consider that imperative.

1838. Then the time would come when the buildings would fall?—I hardly admit that, because when a crack in a wall, or the like, should happen to occur, an owner of house property in London would see that it was essential to set that right completely, even to the extent of partial rebuilding, and so he would do it, and his house would never fall down.

1839. Does your Grace think, however, that it would be fair upon the incumbent that he should have the duty of absolutely rebuilding?—No.

1840. Then your Grace would probably agree with me that this measure is not an absolutely effective measure, but that it is only a partially improving measure, improving upon the old law and the old practice. What I want to lead your Grace to is this: if a scheme could be adopted by which the repairs of dilapidated buildings and dilapidating buildings could be placed in the hands of some public body which would undertake the repairs of those buildings on a principle of making them permanently stable, does not your Grace think that that would be an improvement upon the principle of this Act?—I do not admit that a public body would treat the buildings in any different way than they would be treated under this Act. The machinery might be different, but the object to be aimed at would be the same in each case, viz., that a house would be put into good workable repair and each time it was looked at and judged to need repair, both the one body and the other would have that to do.

1841. I think your Grace said that you had turned your attention, but only very recently, to a scheme which has been propounded to us by the Bishop of Peterborough, which had for its suggestion to put all these matters into the hands of Queen Anne's Bounty Board; if they would and could undertake it on the principle that in any case of survey of ecclesiastical buildings, reference should be made to Queen Anne's Bounty Board, who should undertake repairs at their own cost and out of their own funds, recouping themselves by a certain annual payment levied on the incumbent; has your Grace seen that proposal?

Mr. *Freshfield*—continued.

—I have looked over the scheme in a hasty way; I got it a few minutes before I entered the room, but it is one that requires a great deal of consideration. I have already expressed an opinion that it will be easier to set it going when the present law has gone round the benefices once. But besides that, there are other remarks which offer themselves; for example, take this, and it is only one of the many things which might be said: the Ecclesiastical Commissioners have augmented to a certain value every benefice in England that has a local claim, which local claim was regarded as then accruing; and the value that they fixed upon was 300 *l.* a year, and they also provided a parsonage-house. Now the parsonage-houses are all of recent date, and it is reasonable to suppose that for many generations to come there would not be sufficient insensible waste to render these houses liable to tumble down from lapse of time; but it is now proposed to tax every one of those benefices with an insurance for a parsonage-house, and so to bring them below 300 *l.* a year. From knowing the working of the Ecclesiastical Commission, I know that the moment that that measure was passed, every one of those benefices would come to the Commissioners, and would say, "We want to be raised to 300 *l.* a year. You did raise us to 300 *l.* a year, but the unforeseen operation of another law has reduced us below that sum: will you now make it up?" The answer which the Ecclesiastical Commissioners would make, would be: "We have a great many demands upon our funds, more than we can meet, and having to select, we have selected that amount of 300 *l.* a year, and we have done very well for you, in giving you a complete house and 300 *l.* a year. We are sorry that the Legislature should reduce you below 300 *l.* a year, but we cannot rehear the claim." The consequence would be that, if such a scheme were put upon the Table of Parliament now, some such difficulty as that would come up, whether on the part of the Ecclesiastical Commissioners or of Queen Anne's Bounty Board, I know not; but it is a very large scheme, and requires consideration.

1842. I take it that your Grace sees difficulty in the application of such a system as that?—At the present moment.

1843. Therefore, in your present state of information, it would not be fair to ask you to go further into that; but supposing that such a principle could be carried out in practice, involving, as it would, the putting and the keeping of ecclesiastical buildings in a permanent state of repair, your Grace would probably think that that was a very desirable object to attain?—I think that the general object is good; I do not gather from running hastily over this scheme that every possible objection has been considered; it is a very well intended scheme, and I would speak of it with all respect; but if I had to consider about putting it in a Bill, my past experience of Dilapidation Acts would lead me to think that a great many objections would crop up.

Mr. *Walter*.

1844. Supposing the tax that would be levied upon these new parsonages was no more than equivalent to the annual amount of the dilapidations constantly accruing even in the case of new parsonages, does your Grace think that the objections

Mr. *Walter*—continued.

objections which you have suggested on that point would be reasonable?—No.

1845. I am supposing that every parsonage, the moment it is built, becomes liable to dilapidations; repairs are always beginning to be required; therefore there would be dilapidations even upon a new parsonage, supposing that an incumbent held it only two or three years; but supposing that the tax proposed to be levied upon new parsonages, built by the Commissioners, were not more than would reasonably meet the accruing dilapidations, does your Grace think that there would be any valid objections to that proposition, supposing that it did away with all liability for dilapidations?—I think a wise incumbent would embrace it, and be glad to do so.

1846. I understand your Grace to say, that one of the great difficulties connected with this whole question was the difficulty of finding money to pay for dilapidations when it was not to be got?—Yes.

1847. Does your Grace see any other way of securing an incoming incumbent the debt which is due to him for the dilapidations of his predecessor than by imposing a tax upon the living, and deducting it annually from the income; is there any legal means at present of compelling an incumbent to be so provident as to secure the payment to his successor of the dilapidations due upon his living?—No, there is none.

1848. Does your Grace see any other way of securing that which is only a just debt than by imposing a tax upon the living, which should be annually deducted from it, and which would provide for the payment of that debt?—My difficulty in the matter is not upon the principle; I should not wish to be taken as objecting to this principle; I think that it is very likely that we shall soon see our way to its being a practicable thing. Let me put this case. At this moment a benefice is vacant, and the dilapidations are assessed at about 900 *l.*, the new incumbent will, before he accepts the living, ascertain that they are likely to be paid by his predecessor; but supposing that they were not forthcoming from the predecessor, then this fund would be taxed at once to the great amount of 900 *l.* which is half the price of the parsonage-house and three years income of the living, and that would inflict a blow upon the fund.

1849. I am supposing that this fund could only be applied to the benefit of those livings which have contributed, and to the extent to which they have contributed payments towards the fund; I am not supposing the case of a general insurance upon which everybody should have a pull, but only that, in order to secure the next incumbent from being unjustly punished in consequence of the improvidence of his predecessor, all livings should be taxed to a certain amount, depending upon the condition of the parsonage, in order to meet those dilapidations when they became due?—I quite understand; but taking this present case (although it is a large example, it is a very good one to test it by), the living is of the value of 300 *l.*, and the dilapidations are 900 *l.* Until that has been done by some private source, once for all, how is it to be provided that a living only worth 300 *l.* should be allowed to pull upon that fund to the extent of 900 *l.*?

1850. I think that that could only be applied prospectively?—To that extent I quite agree.

Mr. *Freshfield*—continued.

1851. With regard to glebe lands, I should be glad to know what is your Grace's opinion as to the expediency of letting glebes where the value of them is greater in the market than would be represented by the annual sum for which they would be let, and where the charge for buildings is considerable, applying the money to the improvement of the living?—I am very much averse from selling glebes.

1852. Your Grace objects to parting with real property?—Yes.

1853. Where the land of a glebe, for instance, is worth for residential purposes we will say half as much again as it is worth to let according to its simple agricultural value, your Grace still holds that it is better for the church to keep the land than to part with it for a sum of money which would bring a much larger income than the rental of the glebe?—That very often comes before me in a practical shape, because I have to consent to those sales. Viewing the fact that the price of land is continually increasing, and the selling price increasing more than the rent (which is a curious phenomenon), I never look with favour upon any sale which does not offer an advantage of eight or 10 years' purchase; but given that advantage, I think we ought to consent to the sale. Some glebes consist of three or four outlying acres; the living is in the diocese of Ripon, and the glebe in the diocese of Carlisle. In such a case I think the glebe might be sold with advantage.

1854. Is your Grace aware whether the clergy who have glebes would themselves be favourable to selling the glebes and getting a larger income, or to keeping them for the general supposed benefit of the Church?—It is a question in which the bishop represents the permanent interest, and the incumbent represents the life tenancy, and, therefore, the bishop and the incumbent in this case have different interests; the incumbent is content with anything that gives him a small advantage, especially as he gets immunity from dilapidations immediately after the sale; and, therefore, very often the mere fact that there would be no dilapidations disposes the incumbent to press for a sale. But the bishop represents the permanent interest, and he says, "There must be a clear advantage to the Church, and I think your land will by-and-by be worth more, and therefore we must not sell." The clergy have two inducements: first, there is the immunity from dilapidations, and next there is the advantage of perhaps two or three years' purchase.

Lord *George Cavendish*.

1855. We were told early in this inquiry that the cultivation of glebe land is not subject to the law of dilapidations; is that the case?—No; but leases can only be granted for certain limited periods, and under certain consents; and that is the way in which that is guarded.

1856. With regard to the cultivation of the land, seeing the incompetency of many of the clergy to understand the management of land, and the advantages which are taken by tenants of their incompetency, do you think that it would be desirable that the law of dilapidations should be applied to the management of land as well as to buildings and fences; that there should be some system of valuing at the commencement

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and termination of the incumbency?—An incumbent cannot grant a lease without the consent of the bishop; and there are other restrictions as to the time for which he can grant a lease; but he can only grant it under very restricted conditions, and it passes under somebody else's eye, and the bishop's secretary always looks over the lease and sees that the covenants are right. Therefore I am not prepared to think on the whole that the security is not sufficient.

1857. Even between the annual lettings of a farm, the farm very often goes completely out of condition, does it not?—I have not considered it enough to give an answer that would be worth anything.

1858. With regard to a question which was put to your Grace as to paying the diocesan surveyor's by salary out of a diocesan fund, would it not be necessary, in order to raise such a fund, that a rate or tax should be levied on each incumbent; or how would that fund be raised?—I am not in favour of the salary, and I do not know how it would be proposed to raise it; I prefer his being paid by the work done.

*Chairman.*

1859. Following up for a moment the question of the honourable Member for Berkshire, where the glebe land attached to a living is some considerable distance from it, and the clergyman can have no possible personal enjoyment of it, and it is subject to dilapidations which he cannot look over, do you not think that in those cases his wishes might be considered?—It would be an element in the case, no doubt.

1860. Do you not think that, with these obligations imposed upon him by law, if he did not sell to an individual, he might ask a public body like the Ecclesiastical Commissioners to relieve him, so as to give him an increased benefit, and discharge him from liability; that is to say, if you would not let it go to the general public, might not some ecclesiastical public body relieve him of the liability, and give him the benefit?—It would be an unpopular step, perhaps, with Parliament, who would not like to see the Ecclesiastical Commissioners placed in any more favourable position as buyers than the other people; at present they can only buy in the market.

1861. Speaking under correction, the Ecclesiastical Commissioners can buy the life interest of parties where the reversions are vested in them?—Yes, that they can do; they do it under their original Statute. Power was given them to run out leases, and it was very desirable that that vexatious process should be eased by allowing them to say, "Here is your life interest so much, and here is our reversion so much; we will either buy or sell; if it is convenient to you to sell your interest, we will take it; or if you wish to have our reversion of it, or the freehold, we will sell you that, and the price shall be divided between us."

1862. Have they no power of investing their surplus moneys in land?—Undoubtedly, but in the open market.

1863. Would there be any objection to their going into the open market, if they were prepared to buy in that way?—As I have already stated, there is this curious phenomenon at present: that the selling price of land is quite out of proportion to the rent of the land. Now, the Ecclesiastical Commissioners never would give fancy prices for land, but the outside public does.

*Chairman*—continued.

1864. Supposing that, with the sanction of some diocesan authority, the glebe land could be sold, and that the money which, taking your Grace's view of it, would produce a very much larger income, was paid in to the Ecclesiastical Commission, and that they had that power, they would not be detrimented, nor would the Church be detrimented?—If I know the office at all, the Ecclesiastical Commissioners themselves would object to come before Parliament asking for any preference as buyers in any shape or form whatever; because any one who knows, as the Chairman does, the past history of the Commissioners, would know that their operations have always been looked on with jealousy, and they take the view that it is desirable not to give causes for jealousy.

1865. Looking at the large amount of land which the Ecclesiastical Commissioners now hold as a Church corporation, would the Church feel the sale of those small outlying glebes from the small livings?—A great many of them are sold constantly, as the officers of Queen Anne's Bounty would be able to tell you; but there has been, not only on the part of the bishops, but also on the part of the lay members of Queen Anne's Bounty Board, who pay great attention to its affairs at present, an indisposition to sell at the ordinary market value of the land, arising from a conviction that the market price of land is tending constantly to rise.

1866. But supposing that a certain number of incumbents possessing these small portions of glebe land, which perhaps form the staple of their small income, were to make an appeal in some shape or other to be relieved from these dilapidations which press heavily upon them, might they not have the same, or a better income by disposing of the land?—A great deal of it is disposed of by their getting 40 or 42 years' purchase. When they can produce a case of that kind, it is immediately disposed of, and the present state of affairs warrants that kind of expectation on the part of the vendor, I think.

1867. Assuming that a very considerable price, even more if necessary than what your Grace has stated, were offered, do you think that small livings might be relieved from the obligation of dilapidations of former buildings by selling the glebe?—I do, and it is being constantly done. Now that the Dilapidations Act has introduced a more stringent treatment of dilapidations, the number of applications has very much increased. The clergy do not like these small glebes; they complain of the indefinite amount of dilapidation.

Lord *George Cavendish.*

1868. Could not some arrangement be made by the incumbent of a living with the consent of his diocesan to transfer such a small glebe to the Ecclesiastical Commissioners, and to receive a certain income in its place?—I can only repeat that the Ecclesiastical Commissioners, if it was put upon them by Parliament, would have no choice; but they would not willingly accept it, because, as I have already stated, they are now buyers in the open market, and they would expect that suspicion would arise if they were put in the position of preferential buyers.

1869. Do

Mr. *Wait.*

1869. Do you think that the present system works well that allows a surveyor himself to carry out the alterations or the improvements that he recommends, and enables him, at the same time, to charge a per-centage upon such improvements, thus giving him a direct interest in, perhaps, directing greater improvements than might be otherwise necessary?—We have never had any complaint of that in my own diocese. We allow it to be done in this way: that the surveyor charges 2½ per cent. upon the valuations of dilapidations where he does not execute the work himself, and 5 per cent. where he does. That per-centage including everything, and he than gets nothing for the survey; I do not think I have ever had any complaint of that.

*Chairman.*

1870. Your Grace gave the Committee some suggestions of alterations proposed at a meeting of the clerical body in January; why did the minor canons wish to come in under Clause 25?—The minor canons were not represented at all; it was said that it would be desirable to make a provision for minor canon's houses; but I should like to explain to the Committee why that exceptional treatment in Clause 25 arises at all. It has been the subject of comment that the bishops who assisted in framing this Act did not place themselves under it; the reason of that should be explained; all the bishops who have permanent estates are under the Ecclesiastical Commissioners for very important purposes. When the see becomes vacant, a fresh valuation would take place of the estates, and if it was then found that the lands would produce more than the statutable income secured to the see, the permanent estate would be altered to that extent, so as to make it produce the right amount; and for that purpose it would be essential that the Ecclesiastical Commissioners' surveyor should go over the whole ground; more than that there is a later Act, to which I cannot now refer, which provides for dilapidations upon the lands given to the bishops as permanent estates. When lands were transferred in fee simple, say to the Diocese of York, the Commissioners did not take time to put them all in repair, and the consequence was that they were handed over to the bishop in a state of imperfect repair; that has been the case all over England so far as the work has gone on at all, and some of the bishops said, "We shall be responsible now for dilapidations, although we received the buildings from the Commissioners in a dilapidated state;" in order to meet that, a clause was introduced into an Act about 10 years ago which provided virtually that all the estates were to go back to the Commissioners, and that they were to be the judges of dilapidations; that being so, it seemed desirable not to bring in fresh machinery with regard to the bishop's house, seeing that the bishop's glebe land must be under this machinery; and so it was all placed under the Ecclesiastical Commissioners.

1871. The bishop in that case is not any worse off than the new incumbent who can get nothing from the old incumbent now?—No, I do not say that he is.

1872. The cases are parallel as between the bishop who comes into houses out of repair, which the Ecclesiastical Commissioners ought to have done, and a new incumbent, as the honourable Member for Berkshire put it, who comes into a dilapidated house, with the old incumbent not being able to pay the dilapidations?—The parallel is in this respect incomplete: that the Ecclesiastical Commissioners has a large account in the Bank of England, and the outgoing incumbent presumably has not. The Ecclesiastical Commissioners were bound by Parliament to transfer to the bishop certain farms and so forth in a proper transferable state, and they were able to do it; and therefore there was no reason why they should not.

*Chairman*—continued.

1873. With that view, which is a full justification for the exception, why should the minor canons be thought to have any right to come in?—The houses are in some cases part of the chapter's property. With regard to the chapters, great diversity of practice in the different chapters made it desirable to leave it as it is. In some cases the chapter repairs the houses, and in other cases the canon himself is liable, and we thought it on the whole better to leave them in the hands of the Commissioners. I do not suppose that if we had thought that it would create any comment we should have gone for it.

1874. Under Clause 25 the bishops had a right of employing any surveyor they choose to select, provided they get a fixed tribunal to approve of him, and that is exactly what the parochial clergy are now asking for, namely, right of selection of a surveyor, provided some authority that may be named approves of him as a qualified person?—The analogy is not complete: the Ecclesiastical Commissioners are at once the authority that approve, and the other party in the cause, as regards the estates of the see.

1875. Supposing that two clergymen, one the outgoing incumbent on a change of living, and the other the in-coming incumbent, say, "We have selected A. and B.," or, "We have jointly selected B., will your Grace approve of him as a competent man to decide between us;" would you allow that to be done, or would you take a larger view, and let the appointment of surveyors be general throughout the diocese, having, perhaps, one in each deanery, if necessary, and giving the parochial clergy a right of choice amongst them?—As I have already stated, we get the work done now, I think, more cheaply than the regular surveyors' charges; and I am in favour of increasing the number as long as you can keep the work down to a cheap scale.

1876. Still the parochial clergy are the people who pay for it; the public do not pay the cost. If the parties who pay the cost ask for an alteration, is there any ground upon which it should be refused?—A power might be given to a person to call in a surveyor at his own expense. The real meaning of Clause 25 is, that the surveyor to the Ecclesiastical Commissioners shall do it.

1877. You might go to Mr. Hunt or Mr. Pownall; supposing that you chose either of them, and went to the Ecclesiastical Commissioners, have you any reason to doubt that the Ecclesiastical Commissioners would refuse either of those gentlemen?—I would rather see Clause 25 altered, so as to limit us, than have it the other way to an extent that I thought prejudicial to the clergy at large.

1878. If the parties who pay the cost prefer to have for their surveyor a person in whom they have

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*Chairman*—continued.

have confidence, and who a tribunal like the archdeacon and the rural deans would have certified was a fitting man, is there, speaking as an abstract proposition, any ground upon which you could refuse them such a right of selection, the parties paying the costs, whether more or less, being willing, and the man nominated by them being certified as qualified?—As an abstract proposition, there is no objection to it; but I am perfectly persuaded that the moment that the clergy become aware that, by throwing open the market, they would be placed in contact with the general system of surveyors' charges, such as the great London men would charge, they would earnestly desire to return to the old state of things.

1879. But they need not select a great London man, if there were a large number of surveyors in the diocese?—The contract between the diocese and the surveyor I take to be this (if I am wrong, the argument altogether falls to the ground): The diocese says to the surveyor, "We will make you our surveyor, one of three or one of four; we will tie you very tightly down as to costs, because the poor benefices cannot afford to pay much; but on the other hand, you shall be printed in the diocesan calendar as surveyor; you will put that at the head of your letters, and so on, and you must be content to do this particular work at a low scale, in consideration of the appointment which you hold." He takes it on those terms; he says, as they have said to me, "This scale of fees is really not remunerative, but we like to have the work; it is connected with the diocese," and so on; and as long as there is that element in it, we get the work done for the clergy at a cheap rate. If that argument is unsound, and you can get any good surveyor to do it at this scale, I have nothing to say against increasing the number; but it is not everybody that is a very good surveyor of ecclesiastical dilapidations; and therefore you ought to be careful in settling the charges so as to have competent people.

1880. There are three parties who we will say are interested in this question; there is the general public, the parochial clergy, and possibly the diocese; but certainly the two first, and to a considerable extent; in what way does your Grace speak of the diocese as having the appointment?—I mean the body of rural deans as representing the clergy; it is the clergy versus the surveyor.

1881. Are not the only two parties who can be interested in this matter the general public

*Chairman*—continued.

and the body of the clergy?—I do not think that the general public care very much whether the clergyman is in a good house or not, so long as he preaches well to them and ministers to their wants. By the "diocese," I meant the parochial clergy taken as a whole, and not judged of by one or two complaining parties. Whilst this Act was before Parliament the parochial clergy made no kind of demonstration against it whatever; on the contrary, it was assumed that it was carrying out in the main their views; the parochial clergy want a survey cheaply done; there is only one way to get good work cheaply done in this matter, which is to pay the surveyor partly by honour; it is a thing that an active young man would take because it gets his name rapidly before the world, and he gets other employment as a church architect.

1882. If, as you now state, the parochial clergy are the parties really affected, the bishop, archdeacon, and rural dean are mere machinery for carrying out the general arrangements?—They ought to be merely administering the Act with an enlightened view of what is best for the clergy.

1883. What is the duty of Parliament to a great extent; Parliament has laid down that this body of clergy should keep their houses in order, and has provided the machinery by which that should be carried out; but the diocesan authorities are merely carrying on official work, and they have no direct interest in it?—Not at all; if, in the wisdom of Parliament, Parliament says that it can be better done by other machinery, by all means let Parliament make an alteration.

1884. Your Grace has stated that the parochial clergy are the people who are really interested in the matter?—Undoubtedly; but by parochial clergy should be understood not those alone who write the complaining letters, but the whole of the clergy. It is all very well to say, "A surveyor has done this or that;" people are naturally sensitive about cost. A surveyor may have charged 13 *l.*, but if another surveyor would have charged 26 *l.* for the same work, it does not follow that the complaint is well founded. Therefore I earnestly desire that Parliament should legislate in this matter with a view to the general opinion of the clergy as a whole, and not merely upon these separate complaints. My strong belief is that the work is at this moment done more cheaply than it could be done by a system of throwing the thing more wholly open.

Mr. Edwin Hippisley, called in; and Examined.

Mr. *Hippisley*.

*Chairman*.

1885. You reside at Wells, I think?—I do.

1886. And you have been in practice as a surveyor for a great many years, I know?—I have, and in dilapidation cases, for 30 years past.

1887. When this Act of 1871 came into operation, you were appointed as one of three surveyors, I think?—One of three.

1888. And you had your own separate districts in the Diocese of Bath and Wells, I think?—Our appointment is that each surveyor is appointed to the whole of the diocese.

1889. In the event of a benefice being vacant,

*Chairman*—continued.

or a complaint being made, who has the selection of the surveyor?—By the wish of the bishop, and as a matter of arrangement between the surveyors, we laid before his Lordship a map of the whole diocese, marked out in equal parts, with about 161 benefices in each of the three, and his Lordship has, since that time, sent each surveyor into what may be called his district.

1890. Then, although you were originally appointed as general surveyor over the whole diocese, you have yourselves made out an exclusive district for each?—We have.

1891. And

*Chairman*—continued.

1891. And that has been the practice which has been adopted?—In my own district, in one case, his Lordship appointed Mr. Wainwright to survey a benefice that came within the boundary of my district; I refer to the rectory of Mells.

1892. When did this districting commence?—From the beginning.

1893. With the exception of one or two border parishes, if anything occurs in your district you are called upon as a matter of course, I suppose?—I am.

1894. Supposing that there is an objection to your report, does the bishop then call in one of the other two gentlemen?—If required to do so by either of the parties objecting.

1895. He has a right to choose any surveyor, has he not?—He has.

1896. As a mater of fact, when there is an objection raised does he call in either Mr. Wainwright or Mr. Whitehead as against you, and are you or is Mr. Whitehead called in as against Mr. Wainwright?—In one case in Mr. Whitehead's district, I was called in by his Lordship, and there was a considerable difference between my amount and his; so that Mr. Wainwright was also called in, whose amount was the sum put on the bishop's order, my total being a few pounds above, and between him and Mr. Whitehead.

1897. As a matter of principle and of practice, without going into detail, when you make a survey and an objection is made to your report, has the bishop then a power to call in any surveyor where in fact he does call in either Mr. Wainwright or Mr. Whitehead?—There has been no case in my district where another surveyor has been called in.

1898. Then there has been no objection to the reports in your case?—Either the objections have been modified or the reports have been upheld.

1899. Modified by the bishop?—Modified by the bishop.

1900. Before he makes a modification does he call in anybody else to advise him?—No, the objections are made by the incumbent to the bishop and sent to me, and I have to report to his Lordship upon them, and then his Lordship comes to a decision.

1901. Has he ever called in a surveyor against you?—No, not since my appointment.

1902. How many objections have been made to your reports?—Two; and there is one pending now, that is on account of the dilapidated state of the place when the present incumbent came in.

1903. In how many cases do you think you have surveyed?—I have reported on 45, and I have three pending now to survey.

1904. How many of those were on complaints, and how many were on vacancies?—I think there was only one upon complaint (since sequestered); and six voluntary. The others were all on vacancies.

1905. The Committee have had before them two complaints that have become rather prominent in the Diocese of Bath and Wells; one, I think, is called the Paulton case, and the other is a case which has been mentioned two or three times, perhaps in your hearing, with regard to the east window, the Axbridge case; I believe both of those were on your report?—They were.

1906. There have been some meetings about them, and, I think, some legal opinions taken on both sides?—Yes.

*Chairman*—continued.

1907. I think that in the case of the chancel or east window, the bishop has confirmed your report?—There was no legal objection made to the report.

1908. The month having passed by, the bishop was then bound by the Act, and your report became absolute without any action on the part of the bishop?—Without any action on the part of the bishop.

1909. But in the other case, which is, I think, with regard to fencing glebe lands, the bishop has confirmed your report upon appeal?—He has confirmed the greater part of my report in the Paulton case.

1910. As regards that particular portion, did he serve it in any way?—One of the objections was to a fence that I had included in my report to be renewed. The bishop had laid before him evidence that this was a field which was attached to the benefice 50 years ago, and there was no fence at that time, though there are traces of a fence still remaining; and, inasmuch as it was added to the benefice in that state, the bishop struck it out of the order.

1911. Did you take any evidence as to how recently the fence had been there?—The fence had not been there for many years past.

1912. For 40 years?—So it appears from the evidence since.

1913. Did you yourself, before you ordered the fence, obtain any evidence as to how recently it had existed?—No, I could not ascertain that fact. The churchwarden was the person who gave me all the information that I received, and he, it appears, worked up evidence afterwards for the Rev. Mr. Milward, the late incumbent, and laid it before the bishop. This field was added to the vicarage about 45 or 50 years before. An old man had been found in the parish who said that stock could go from one part of the field to the other at that time.

1914. What justified you in ordering the new incumbent to make the fence?—It was fenced on three sides and it was never a common field, it was simply a field that had been occupied as part of a farm, and the farmer had allowed the fence to go down.

1915. Was this glebe?—No, it was in common with some one else's land, and therefore the fences of the glebe were not perfect, without this fence being put in order. It was a separate piece of land detached from all the rest of the glebe; it could not have been separately occupied without the fence.

1916. Did that influence you in making your report?—Clearly; the glebe was treated as part of the farm.

Mr. *Beresford Hope.*

1917. Were this field and the rest of the land occupied by the same tenant?—They were occupied by the same tenant.

*Chairman.*

1918. As a matter of fair provision to the glebe you thought it ought to be fenced?—Yes, because otherwise the vicar would be at the mercy of the man having the farm to give him what rent he liked.

1919. Did the tenant want the fence?—I understood

Mr. *Hippisley.*

8 May 1876.

*Chairman*—continued.

derstood that he did not want the fence. It was a pasture field, and therefore the fence would not disappear, as in an arable field; there was the trace of a bank and upon the bank there were two thorn bushes still growing.

1920. Did you try to obtain any evidence from anyone about it?—A man was sent by the churchwarden with me to show me the glebe lands, who told me he knew all about the parish, and he said that it had been like that for a good many years past; he had never seen the entire fence.

1921. And you saw no one who had seen the fence?—I saw no one who had seen the fence.

Mr. *Beresford Hope.*

1922. What would be the length of the fence?—Probably about 90 yards.

*Chairman.*

1923. What would be the cost of making a new fence?—I included 8*l.* in my report, and the bishop has taken that out of the order.

1924. It was taken up more as a matter of principle than as a matter of cost, I presume?—More as a matter of principle. Mr. Milward also objected to the pointing of the walls which I included in my report. I should state that the vicarage house and buildings were erected during his incumbency. The walls were rough walls, and they had fallen into decay from the decay of the stone; the walls were in holes and required pointing and repair, in order to suit them for their purpose as garden walls.

Mr. *Beresford Hope.*

1925. Were they such walls as are built in Derbyshire of rough stones?—They were mortared walls very roughly pointed.

*Chairman.*

1926. You are now speaking of the garden walls?—I am speaking of the garden walls. Both the opinion taken by the bishop, and also the opinion since given to Archdeacon Denison upon the case, decide that if pointing was a proper repair, then the surveyor was right in ordering pointing.

1927. Why would you have pointing?—Because without it the wet would get into the wall, and it would fall to pieces, because the inner mortar would be decayed.

Mr. *Wait.*

1928. Did Mr. Milward resign the living?—He resigned the living; he was appointed to another living.

*Chairman.*

1929. What was the thickness of this wall?—Eighteen inches.

1930. Are there not a great number of walls on private properties in the same neighbourhood that are built in the same way, unpointed?—No, the chief walls in the fields are dry stone walls without any mortar at all; this wall incloses the lawn and the kitchen garden, and part of the wall is built of sound stone, and very little repair is necessary there, the rough pointing, put originally, being as good as any work that can be done; but in this part the stone was of a different character, a softer stone, and that rendered pointing more necessary.

Mr. *Beresford Hope.*

1931. Is pointing the custom of the country for such walls?—Yes, rough pointing.

*Chairman.*

1932. Did you order fine pointing?—No; then there was another objection with regard to the well-harness; Mr. Milward objected to the report, because I had included a resetting of the stones, and the erection of standards and roller wherewith to raise the water out of the well; I should state that the fields are supplied by wells, and buckets are necessary with ropes or chains in order to draw the water up for the cattle; Mr. Milward's objection was that this was land purchased by augmentation money, and attached to the benefice, and that he never did anything himself to the repairs, which the tenants did. But my argument was this, and it has been affirmed by both opinions, that the in-coming incumbent cannot look to any tenant to do any repairs, because there are no obligations, except under a lease, by which he covenants to repair, and therefore it was to the outgoing incumbent that he must look for the repairs. The opinion which the bishop took, and the opinion of Drs. Deane and Phillimore, also confirmed my report in that respect; I merely included the resetting of the stone, and the putting up of the standards, with a roller, to which a chain or rope and a bucket may be attached.

1933. This is not on lease?—No; the tenant is at a yearly rent, and it is the custom of the landlords to find such things, for I provide harness in similar cases for gentlemen.

1934. You are largely concerned as a land agent?—Yes, and I am receiver for Messrs. Clutton, and their local agent for the ecclesiastical estates in the county of Somerset, or the greater portion of them, besides being surveyor to the dean and chapter of Wells.

1935. One is glad to have the opinion of a man like you largely engaged in other matters; you practice as a surveyor generally?—I do.

1936. I think I have had the pleasure, although I have never seen you before, of your doing something for me recently?—Yes, at Monk's Park.

1937. Do you not think that clergymen should have the right of selecting a surveyor where the two parties who are interested can agree together?—There are two parties concerned.

1938. With respect to the two parties who are immediately interested, when one resigns a living and the other comes in, should they, or should they not, have some voice or power in choosing the surveyor who is to decide what one is to pay and the other is to receive?—No, I think not.

1939. When my tenant went out of Monk's Park and I came in, do you not think that it would have been very hard if some one should have said, "Neither you, Mr. Goldney, nor the tenant, should have anything to do with choosing the surveyor to value the dilapidations"?—No, you are the owner in fee; but a clergyman is not; he is a life tenant, and the trustee for the church for the time being.

1940. You heard his Grace the Archbishop say just now that he knew of no one interested in this matter except the parochial clergy themselves, did you not?—The parochial clergy really have the appointment and the fixing of the fees.

1941. Who

*Chairman*—continued.

1941. Who appoints the rural deans?—In our diocese the bishop generally selects one of the best men in the district for it.

1942. The parochial clergy do not appoint them?—No.

1943. Who do you say is interested in this matter besides the parochial clergy?—The parochial clergy themselves are the parties most interested.

1944. You have just said that the clergy were only tenants for life; whom do you represent if you do not represent them?—I stand between the in-coming incumbent and the representatives of the deceased or the outgoing incumbent; and the successor of the incoming incumbent, if he comes within five years.

1945. At all events, all the people whom you are supposed to represent are the parochial clergy in some way or other?—Yes.

1946. Do not you think, as a man of sense and experience, and large practice, that the only people interested should have some voice in choosing the man who has to decide between them?—I certainly do not say that they ought not to have a voice.

1947. Do you not think that they ought to have a voice, speaking as a man of experience?—I think that there would be a difficulty in getting 480 clergymen together to make a selection.

1948. That may be considered afterwards; but if you say there is the outgoing man and the ingoing man, and his successor if he comes within five years' time, surely one of those three ought to have something to say to it?—I do not mean to say that they should not.

1949. Very likely they would employ you, as a person of some experience; but you would think it very hard yourself, if you had a sum of money to pay, which you could neither estimate by 50 *l.* or 100 *l.*, or even by 600 *l.*, if you could say nothing as to the person who should assess the amount. When you make a report do you call in the incumbent to tell you anything about it?—No; sometimes he accompanies me round, but as a rule I prefer making an independent survey. If the incumbent goes round, some one on behalf of the outgoing incumbent's representatives should go round as a matter of fairness.

1950. Do they ever come?—No.

1951. Do you ever encourage it?—No, I rather discourage it; I have never refused it, but I discourage it unless both parties are present; if they make an arrangement, I do not interfere with them; they are quite at liberty to accompany me if they please; my order from the bishop is to report to him what repairs are necessary to the buildings of the benefice.

1952. And those you determine in secret, and report to him in secret?—I report to the bishop, and after I have made a report, I send a copy to both parties.

1953. But you make up your own mind without taking any evidence beyond what your own judgment affords you?—Yes; I report upon what I have always looked upon as the dilapidations.

1954. In fixing in your own mind what is the law of dilapidations, you are, of course, assisted by your own experience, and by books?—Yes.

1955. And you fix in your own mind what the cost should be?—Yes.

1956. And you fix further in your own mind within what time that ought to be done?—The time is fixed in the Act.

*Chairman*—continued.

1957. Not in the first case, is it; will you look at Clause 15?—In all cases I report to the bishop that the works may be begun immediately upon the order being given; and that they could be completed within a given time, three, four, or six months: because, for instance, where there are fences or other things to be repaired, or sometimes trees planted in an orchard, there is only one season of the year when that can be done.

1958. Do trees planted in an orchard come under dilapidations, according to your view?—Clearly; because if a tree is suffered to decay, it is no longer an orchard; one tree would fall after the other.

Mr. *Beresford Hope.*

1959. Is an incumbent bound to keep up an orchard as an orchard?—Clearly; it has always been so considered in practice.

*Chairman.*

1960. Have you any authority for that?—All the surveyors that I have ever met are of the same opinion; if I had been for the in-coming incumbent, I should have claimed a number of apple trees for filling up vacancies.

1961. What did you do with regard to the fruit trees on the parsonage house wall?—I took no account of those trees.

1962. Do you think that you ought to have done so?—Not of necessity, because one incumbent may choose to keep up a large number of expensive trees which would require great cost to keep them in order.

1963. Did you take the spouting into account round the house?—Clearly.

1964. And supposing there is iron spouting that was decayed, or if there was no spouting, would you order spouting to be put?—I never order anything that I do not either find there, or evidence that it has been there. For instance, if a thatched roof was bad, I should not order a tile roof in substitution for it; the in-coming incumbent is entitled to have the premises in a good state of repair, and with no near prospect of repair; and if he had to rebuild he would have to do so without improvement and alteration. That is the principle and the practice throughout the country with all surveyors who have had to do with dilapidations so far as I know.

1965. But supposing that a man had made some considerable improvement for sanitary purposes, and had pulled down things that had got old and obsolete, would you order him to put them up or to pay for them?—With regard to sanitary purposes, if one is a substitution for the other, and he is ordered to do it by the local authority, I do not think he ought to be called upon to pay.

1966. But supposing he is not called upon by the local authority, and he makes a better provision; what then?—I think that the one should be in substitution for the other.

1967. What has been your practice?—In one case I found that a building had entirely disappeared from the spot; I traced the foundations, and inquired of the people in the district, and I was told it was a stall, with a barn over it. The site of the building was shown upon the tithe-plan in a field a long distance from the vicarage; it was necessary that a barn with stalling should

Mr. *Hippisley.*

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*Chairman*—continued.

be there for the protection of cattle in the winter time, and I included it in my claim (it was before 1871) against the outgoing incumbent, and the other surveyor allowed the claim, after having made the same inquiries as I did. The benefice was vacated immediately after 1871, and the diocesan surveyor, in whose district it came, ascertained the same facts; and that building is now, I believe, at this time erected under the order.

1968. But I was directing your attention more to matters of convenience near a parsonage house, such as closets and so forth; supposing that a man had substituted modern accommodation for old buildings, would you still order the old buildings to be put up?—I know a case, because I was trustee in liquidation, and engaged for the sequestrator, where Mr. Wainwright did order such a building. I objected to it, as the sequestrator referred the report to me, being trustee under the estate, and I said that it was not necessary. It was a second closet in the garden; there being one there already near the house.

1969. You know the fact that that has been done by surveyors, although you have not done it yourself?—Yes.

1970. There is a rule, is there not, among some surveyors, that when a thing has once existed, it should always exist?—Yes, unless authority be given for its being pulled down.

1971. Have you heard of a distinction being taken where buildings have fallen down instead of being pulled down; had that stalling in the field fallen down?—It had been neglected, and had fallen down, but in the late incumbent's time, not in the preceding incumbent's time.

1972. Supposing that an incumbent had intervened, what then?—Then I should say that the then incumbent would be entitled to recover, and being so entitled to recover, he is supposed to recover, and consequently he would take the liability upon himself to put up the building.

1973. How do you read the 70th Clause, then, that he shall not be liable for dilapidations in respect of buildings pulled down?—That refers to where he shall have substituted other buildings.

1974. Supposing that he had put up other farm buildings which he thought more convenient, would you not have taken that into account?—A substituted building for the same purpose and of equal value may be put in a more convenient place.

1975. Did you inquire whether anything of that sort had been done?—No, I knew that nothing had been done. I inquired about it, because I had to inquire as to the building itself, and of what class it was, what it was covered with, and how it was built; all I could see on the spot was the extent of the foundation giving me the size of it.

1976. You have heard the examination of his Grace the Archbishop with reference to a larger number of surveyors; I know you are large-minded man enough not to enter into the paltry question of the fees; can you as a practical man see any reason why, if there are a number of qualified gentlemen, as you know there are in your district, and if they are admitted to be qualified, they should not be appointed?—If the authority having to elect them consider it desirable, I should not myself object to it, but it would not be worth doing unless it could be shown that delay, and consequently cause of complaint on the part of the clergy, arose from the number of surveyors not being sufficient, and that could easily be remedied by any authority having the power to elect surveyors. I do not see that any good would arise by largely increasing the number of surveyors.

*Chairman*—continued.

1977. Take the case mentioned by the honourable Member for the University of Cambridge, of the whole diocese of Winchester, which runs from the Thames to the Channel Islands, there being only one surveyor for that diocese; do you think that a reasonable mode for a man to get his place valued?—There would be more likely to be delay in that case than in the Diocese of Bath and Wells, where there are three surveyors.

1978. Assuming a very small living, and a very small amount of dilapidations, and that the new incumbent and the representatives of the old incumbent want to get rid of it within a week, would you not say that to be able to call in a man in the locality would be a great convenience?—Perhaps the man in the locality, if he was a competent man, and understood the law of dilapidations, might not be able to attend to it a bit earlier than a gentleman in London.

1979. If there were 20 surveyors, they might get B. or C. if A. could not come; in valuing between outgoing and in-coming tenants on a farm, there is very little difficulty, is there, in getting a man to attend to it?—That is a totally different thing.

1980. Why should they not be the same?—It is a technical knowledge that all the surveyors in a diocese do not make themselves acquainted with.

1981. Have you any notion how many leasehold houses there are in this city in which we are now sitting?—A very large number; of course all the large estates are let out upon building leases.

1982. Supposing that there are 800,000 such houses, what would they do if they had but one surveyor?—They would not think of it; they would have a surveyor for each estate.

1983. Supposing that I am buying a house, and that another man is selling it to me, would you not think it right that we should each be able to choose our own surveyor?—Yes; and I say that I have no objection as to the appointment.

1984. Supposing that I buy a leasehold house in Parliament-street, and there is a certain amount of repairs necessary, you would never get the work done if you confined it to one or two surveyors, would you?—Clearly not.

1985. You do not see any practical objection to the operation of the Act, if the law was sufficiently defined and settled?—Since my appointment, I have only had 45 surveys.

1986. And you have had only six applications; do you not think if it was simpler you might have had 60 instead of 6?—I have heard some of the clergy say that it is hardly worth while, because as it only lasts for five years, it is paying one or two guineas a year for insurance, as they call it. It is not that they disapprove of it, but if the certificate was for a longer period they might put themselves out of their way to have their houses put into thorough repair, and go to the expense of a survey voluntarily.

*Chairman*—continued.

1987. Do you calculate in the amount what the repairs would be during the five years?—Merely the value of the repairs at the time of the report; because that is all that the outgoing incumbent is liable for. If I made an excessive valuation, the outgoing incumbent would object to it.

1988. Have you ever heard the other principle discussed, of importing into the amount the sum that you estimate that the dilapidations would come to during the five years; so that the report should practically date from the end of the five years?—Progressive dilapidations were frequently looked at under the old system, and in one of my early surveys I purposely made a special report to the bishop, where the ceiling joists of a house were in a state of decay, but not such as to require immediate renewal. In case of renewing them, I calculated that the cost would be so much; and discounting back that cost, I thought that, taking it as progressive dilapidations, the extent of the out-going incumbent's liability would be so much. The bishop took an opinion upon it, and the opinion was to the effect, that unless the surveyor could certify that the work required immediate renewal, he could not include any sum in respect of it. That knocked up the progressive dilapidations, but still that was an element in the calculation with surveyors before the Act of 1871.

1989. You are not an architect, I think, yourself?—Yes, I have built parsonage houses, a paper mill, and other buildings, and I have men in different parts of the country always at work on new buildings and repairs to estates.

1990. Do you, speaking as an independent man, and not as holding this diocesan appointment, think it a wise thing that the surveyor should be paid by a commission?—I avoid having anything to do with carrying out of works; it involves a great deal more trouble than it is worth.

1991. You think that being in a *quasi* judicial position, you ought not to be interested in the way in which the work is carried out?—Most clearly not, because I think it is open to this objection: that the surveyor would be told by a contractor, "This would have been done differently if you had come here before."

1992. You are paid in the diocese of Bath and Wells, I think, by fees, are you not?—Yes; not by commission; we objected to it.

1993. Under the second part of the Act, on the vacancy of a benefice, the new incumbent has to pay the money into Queen Anne's Bounty, has he not?—Yes.

1994. Under the first part he has to do the work?—Yes; whatever the cost may be.

1995. But under the second part, if he pays the money into Queen Anne's Bounty, and refuses to do the work, who is to carry it out then?—The bishop may then order the work to be done.

1996. Supposing that the estimates do not fit, that is to say, the specification of the work and the money, what occurs then?—Then the new incumbent is liable to pay the difference, under the Act.

1997. Under the 40th section, he has to pay the money in within six months, or 12 months?—The 44th section is the one that refers to the execution of the works: "And if any further moneys shall be required for the completion of such repairs, the same shall be paid by the incumbent."

1998. That is where he is doing the repairs himself; but when he refuses to do the repairs, then the 45th section comes in?—We have had cases before the Committee where the new incumbent has paid the money in, but has said that the surveyor's report being so insufficient, he would not do anything; and then it seems to fall upon the surveyor, does it not?—I have only had one sequestration case of an incumbent refusing to repair; I take it that it would come under the same clause.

1999. The bishop cannot sequestrate if the incumbent has paid the money into Queen Anne's Bounty, because he has performed his obligation there?—I do not think an incumbent refusing to carry out the works would be released from his liability.

2000. Who has to do the repairs then?—That would be in the discretion of the bishop. It is not provided for in that section, and I know of no case.

2001. Will you state what are your fees?—In the 45 cases that I have reported upon, the amount of money ordered by the bishop to be paid averages 179 *l.* 5 *s.* 8 *d.*, that is the value of the works to be done. I am giving you that as a criterion of the charges. The average of fees for the surveys and copies of the report came to 6 *l.* 13 *s.* 6 *d.* in each of those 45 cases; but then I had to pay all expenses, no travelling expenses being allowed in the diocese of Bath and Wells, no matter what the distance, and consequently the amount is reduced to 5 *l.* 9 *s.* 11 *d.*

2002. Then what other fees do you get for final certificates, and so forth?—I have made a calculation as to 20 completed cases for which a certificate has been given in which a second journey is necessary, and second expenses have to be incurred. The net working in the 45 cases is as follows: The survey and copies of the report came to 6 *l.* 13 *s.* 6 *d.*, less 1 *l.* 3 *s.* 7 *d.* expenses. In the 20 completed cases, including inspection and certificates, it came to 9 *l.* 3 *s.* 9 *d.*, less 1 *l.* 17 *s.* 7 *d.*, leaving 7 *l.* 6 *s.* 2 *d.*; so that in the 20 completed cases the whole cost to the incumbent, as far as the surveyor is concerned, is 7 *l.* 6 *s.* 2 *d.*

Mr. *Wait.*

2003. What is your district?—My district includes Bath and Frome, and down to the deanery of Pawlett.

*Chairman.*

2004. Is Compton Dundon in your district?—No, it is in Mr. Wainwright's; his fees are the same as mine.

2005. You say you do not charge travelling expenses, and I see that the first inspection in the return is from three to six guineas?—Yes, three guineas where it is a farm house; where it is a vicarage alone without any buildings, four guineas.

2006. In the other cases it works up to six guineas?—Yes, that is where there are glebe lands and a chancel; six guineas would be the highest fee.

2007. Then what do you charge for your report?—One fair copy of the report is included in that charge, and for the other two copies, one to the

Mr. *Hippisley.*

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*Chairman*—continued.

the in-coming incumbent and the other to the outgoing incumbent, we are allowed to charge 4 *d.* per folio.

2008. What do you charge for the specification?—Nothing whatever; that would be the report, because we specify the matters in detail, so that in the case of every one of my reports to the bishop, the incumbent can put the report into the hands of a contractor, who will give him an estimate upon it; in fact, I have now two cases each between 300 *l.* and 400 *l.*, where the contractor has taken the works upon my report, and at the amount of money named.

2009. Then the final certificate involves another journey?—Yes, and probably a journey between to see the works during their progress, in order that the clergyman may not be kept out of his money, because he can always have money on account if I give a certificate, and if he applies for it.

2010. Does the same charge occur for your intermediate journey and your final journey, as for the first journey?—Clearly not; that is limited to two guineas; for instance, on a final inspection I should have to go by railway to Bath and to many of the places round there, South Stoke, Englishcombe, and other places. I should have to spend 7 *s.* or 8 *s.* for fly hire, which, with a very moderate charge for the hotel expenses, would take away more than half the amount that I receive.

2011. Then, practically, if a surveyor was appointed in the district the incumbent would virtually be saved all the money that you lose; you include in your five or six guineas what you have just mentioned, your railway fare to Bath, and the fly hire and the hotel expenses?—Will you allow me to explain that I think that the surveyors in the Bath and Wells diocese were very hardly dealt with. We were requested by the archdeacons, and a committee of rural deans to attend at Highbridge to say what our fees should be; we fixed those fees from four guineas to six guineas, and we put at the bottom "to be paid second class railway fare and out-of-pocket expenses." When the scale of fees was signed by the bishop we had to pay a penny for a printed copy of it, and we found that after we had left the travelling expenses had been cut out. We intend to bring it forward at the next election.

Mr. *Beresford Hope.*

2012. We have heard a good deal about the Axbridge east window case; will you give the Committee your explanation of it?—Will you allow me to put before the Committee some photographs of it which I have had taken on purpose (*producing some photographs*).

2013. What is the date of this reredos?—Collinson's History of Somerset states that the reredos was put up in 1740 by Mistress Abigail Prowse. From an examination of the window made since my report, it would appear that a glazed window must have existed for a long time afterwards; and if you look in the large photograph you will find that it is stopped up and that the masonry is only small pieces of brick and stone put in in a very rough way; it could not have been put up at the same time that the reredos was, because that is done exceedingly well; and my opinion is, that some rector, finding the lead

Mr. *Beresford Hope*—continued.

decayed and the glass broken, thought it would be cheaper to put in stone than to put in glass.

2014. How far does the reredos rise up into the window?—It blocks up the window.

2015. Then that was put up so as to block a still glazed window; the window was glazed, but the reredos was put up standing in front of it?—Yes.

2016. Of what material is the reredos?—Wood, painted.

2017. The style is quite incongruous with the church, but there is a certain amount of rich carved work?—Yes, it has velvet in the interior, and Archdeacon Denison himself called it a "miserable wooden thing."

2018. Is that not a question of taste? if this were carved oak it would have its market value for several purposes?—No doubt it was put up regardless of expense at the time, and it was very well done, but totally out of character with the church.

2019. In taking it down were you taking down a thing both incongruous and valueless, or were you ordering a thing to be taken down, which was good of its kind, and would have its value in Wardour-street, or somewhere else, where they use up old wood work?—I did not order it to be taken down; I should state that after the meeting at Axbridge, I wrote a letter to Prebendary Milward, he being the rural dean of the district, and the bishop also wrote a letter; the letter of the bishop was not published with the report of the proceedings.

2020. What did you do when you made your survey?—When I made my survey I looked upon the east window as a part of the fabric. I found that the stone work required repair, but it was in a far better state than one would have expected, from the length of time that it had been blocked up; and therefore I concluded that it must have been protected by glass up to a comparatively recent period as compared with the reredos. I felt that the repair of the stone work and the glazing of the window ought to be done as part of the fabric. I only said, with regard to the reredos, that it blocked up the window, and that necessitated its removal.

2021. Your order, in short, was to take away the stone, and to substitute glass, but you gave no order at all in regard to the reredos?—The bishop went beyond my report in making the order for its removal, and the question is, whether it could be removed without faculty.

2022. Your order, in short, was to make the glazing of the window good?—Yes, and the stone work of it.

2023. Was the stone work much perished?—That will be seen by the large photograph. The mullions are for the most part very good; it is the upper part of the tracery that is most damaged.

*Chairman.*

2024. What was the total amount of the repairs in connection with the window?—Something under 30 *l.*

2025. And what was the amount for taking the other thing down?—I included nothing for the outgoing incumbent to pay in respect of that. Part of the wood work is now in a state of decay, but I did not include that in the repairs; I considered

*Chairman*—continued.

idered that as part of the interior furniture of he church, and not as part of the fabric. It is ke a picture frame with velvet inside it, in act.

2026. Did you get any evidence as to how long go it was put up?—I included it in my report s being one of the repairs necessary under the ishop's order. The bishop ordered me to report hat repairs were necessary to the buildings.

2027. Was this valuation made at the request of he incumbent, or upon a complaint?—Upon va- ancy; Mr. Beadon resigned and Mr. Dowell as appointed.

Mr. *Beresford Hope.*

2028. You had no evidence to prove that the etriment which had occurred to the window had een wilfully committed before Mr. Beadon's in- umbency?—No; it was closed up before his ncumbency.

2029. How long had he been incumbent?—ome 30 or 40 years.

2030. Supposing that you had had evidence hat a kitchen garden was attached to a living, nd that the kitchen garden had been turned into rable or pasturage, would you order it to be re- nstated?—That would be waste to the surface, or which an incumbent is not liable.

2031. Then upon what principle do you com- el the reinstatement of orchards?—Because it is ke pasture land, and I have always treated it so; nd Mr. Cornish, of Exeter, and many other sur- eyors of repute have always, as a matter of ractice, done so.

2032. Fruit trees on a wall you do not order o be replanted; what is the difference between standard apple tree and an apple tree nailed on wall?—An orchard would not be an orchard ithout apple trees, but in a garden you may ave pear trees, or plum trees, or any other trees, ccording to the choice of the incumbent.

2033. You would not compel a man to replant mber trees that he had cut down?—No.

2034. Have you any reason for reinstating rchards?—Because you thereby destroy the alue of the glebe; the orchard would be more aluable than pasture land.

2035. But if the pasture land were broken up nd turned into arable land, would not that lessen he value?—It would lessen the value in some ases, but in some cases it would increase the alue.

2036. Would you make a man replant a goose- erry bush or a strawberry bed?—No.

2037. But it would be more valuable as a rawberry bed, or as a market-garden, than as ommon agricultural land, would it not?—The arden would be supposed simply to be for the se of the incumbent, and without reference to s value to other parties; and the incumbent may hoose not to have gooseberry trees, and may think strawberry bed more valuable; but, for an rchard, there must be apple trees.

2038. But whether he uses the produce of his arden or not, it is money's worth; he eats what e can, and sells the rest?—That would not enter nto my calculation.

2039. He might make his own cider, and make o money out of the orchard?—That would be the rincipal use for it.

*Chairman.*

2040. Have you any further information that you would wish to give to the Committee?—Mr. Simmons stated that there was a great outcry in Somerset. I have important letters here to show that a great deal of this outcry has been for the want of proper information. For instance, there was a meeting at Bath, of which Prebendary Erle, Rural Dean, was the chairman, and I have letters from him and Prebendary Buckle, to show that they were under a misapprehension with regard to the Axbridge case; and I have also a letter from a Member of Parliament who was present at the meeting, and they all say that they consider that I was quite justified in what I did as to the case; that is to say that the declarations at the meeting were made upon insufficient facts.

2041. But there has been, I think, some want of good feeling in your district with regard to the operation of the Act?—No; for instance, Mr. Goldney, one of the rural deans and prebendaries, says that I was quite justified, and that I should not have done my duty if I had not ordered the window to be restored. I have a copy also of the bishop's letter, which I will hand to the Chairman. There is only one small window on the south side which gives light to the whole of the large chancel.

Mr. *Wait.*

2042. What is the depth of the chancel?—Some 30 feet, I think.

*Chairman.*

2043. Have you anything more in the way of suggestions to make to the Committee as to giving the local clergy some interest in the matter?—There are other cases; for instance, the cases of copyholds, where it comes very hard upon the clergy. I have several memoranda here with regard to it.

2044. With regard to that, might it not be expedient to call in a surveyor on the part of the copyholder or lessee, and make his obligations the limit of the obligations of the incumbent?—I was the umpire in this very case which Mr. Simmons referred to. That survey was taken at the request of Mr. Scarth, the incumbent, for the purpose of making a claim upon the representatives of Mr. James, the late lessee; they refused to pay the money, and Mr. Scarth appointed Mr. Spackman, of Bath, and the representatives appointed Mr. Hirst, of Bristol. They could not agree, and they called me in, and it was my award of 213 *l.* that was made between them upon the repairs required by the covenants; that was the Wrington case. There is another case that I was going to refer to with regard to copyholds falling in. In copyhold tenures there are no covenants to repair at all. In one case that I know of, a house fell into hand, and the incumbent, although the copyholder was a man of wealth, could recover nothing from him; in two years after that the incumbent died, and upon his death upwards of 120 *l.* were paid in respect of these dilapidations; and since the new rector came in other copyholds have fallen in, upon which he is now liable for the dilapidations.

2045. I think you may take it as the law, that the representatives of a deceased copyholder are not liable at all?—They are not, but the liability falls upon the representatives of the deceased incumbent, and it is upon that principle that I say that time has nothing to do with the date of the dilapidations.

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*Chairman*—continued.

dilapidations. The two incumbents agree among themselves that no survey shall take place, or they agree upon the sum, or one sets the fixtures against the dilapidations, the outgoing incumbent gets rid of his liability, but the in-coming incumbent takes it, because otherwise it would be necessary for the surveyor to inquire when the dilapidations began.

2046. You think that there is a point when it should not go any further, and that that point is 1876?—No, I say that there is no point, because the dilapidations are carried down from one to another, and unless the surveyor is directed to the contrary, there is nothing in the law to limit it; he must, under the bishop's order, take the repairs as necessary to the fabric at the present time; in the Axbridge case, I only know from Collinson's "History of Somerset" that that reredos was put up in 1740; but the glazed window no doubt existed as a glazed window for a long time afterwards.

2047. Then what binds you at the present time is your instructions under the bishop's order?—Clearly.

Mr. *Beresford Hope.*

2048. Supposing that instead of this reredos being put up before the window, you had found traces of painted glass partly blocked up, do you consider that you should have ordered that to be reinstated?—No, only the plain window. In one case where I was called upon as a local agent for the Commissioners' estate, to repair the painted glass of the window of a chancel belonging to them, they declined to do so; the Commissioners themselves refused to repair this as a painted window, and their agents, Messrs. Clutton, gave me directions that I might repair the window as a plain glass window, but not as a painted window; and therefore an obligation that would not attach to them would not attach to an incumbent. This window was put up as a memorial, and left in the chancel.

Mr. *Beresford Hope*—continued.

2049. Do you adhere to the statement that you did not order this reredos to be removed; you contemplated the reredos still standing there?—I said in my report that it would necessitate its removal for the use of the window.

2050. In ordering the glass to be reinstated in the window, you know you were ordering what would lead up to the removal of this erection?—I drew the bishop's attention to it specially, and he ordered its being removed.

2051. So that you led up to its being removed?—Exactly, but not to any repair of it, although part of the woodwork is very much decayed.

2052. Whose property would it have remained? that of the out-going incumbent, or of the in-coming incumbent?—The question is whether it would not be like the Communion Table, or the Altar railing, which has to be repaired at the expense of the parish; and therefore anything in the nature of fittings inside a chancel would belong to them. The only thing that an incumbent would be bound for would be the seats belonging to him.

2053. Assuming that its value in the market was considerable, as it would have been if it had been in good repair, would not the incumbent have a right to sell it towards meeting the expense which you put upon him?—No, I should say not.

*Thursday*, 11*th May* 1876.

MEMBERS PRESENT:

| | |
|---|---|
| Mr. Birley. | Mr. Beresford Hope. |
| Lord George Cavendish. | Mr. Knatchbull-Hugessen. |
| Mr. Freshfield. | Mr. Monk. |
| Mr. Goldney. | Mr. Wait. |
| Mr. Gregory. | Mr. Walter. |

GABRIEL GOLDNEY, Esq., IN THE CHAIR.

Mr. GORDON MACDONALD HILLS, called in; and Examined.

*Chairman.*

2054. You are Official Surveyor for the diocese of London, and a portion of the diocese of Rochester, I understand?—I am.

2055. Where do you reside?—My office is in John-street, Adelphi, and I reside in Brompton.

2056. Are you the sole surveyor for the diocese of London?—I am the sole surveyor for that diocese.

2057. How many other surveyors are there in the diocese of Rochester?—There is one other.

2058. Has each surveyor a distinct district, or are they called in promiscuously?—Each has a distinct district.

2059. What is your district in the diocese of Rochester?—It consists of two wings, which attach themselves, in fact, to London; one of which is the county of Hertford, in the north of Middlesex, which is all within my district; and the other is the archdeaconry of Rochester, which includes Greenwich and Woolwich, and that neighbourhood, and the hundred of Hoo, which lies further down the river, and is, as it were, an island, besides a district lying along the Medway.

2060. How many benefice residences are there within the scope of your duties, both in the diocese of London and in the portion of the diocese of Rochester?—The benefices are 802. About 260 of these are without residences, though some of the 260 have buildings other than parsonages belonging to them.

2061. Were you appointed immediately after the Act came into operation?—Yes; I was appointed, and I have been re-appointed.

2062. There has been no other appointment than yours for London, has there?—None other.

2063. And only two for Rochester?—I was appointed during good behaviour for London. I was appointed in the diocese of Rochester for a limited time, and I have been once re-appointed for Rochester.

2064. Then your appointment for London you consider a general one, and your re-appointment to Rochester is for a limited period?—Yes.

2065. And the first limited period has expired?—It has.

2066. How long have you been appointed for Rochester now?—The appointment was renewed in the autumn of 1874, and was made for seven years, the first appointment having been for three years.

*Chairman*—continued.

2067. You were in practice as an architect and surveyor previously to 1871, were you not?—Yes.

2068. And you were engaged in matters connected with ecclesiastical dilapidations previously, I suppose?—I am speaking now of days when I was but youthful in the matter; but from the year 1846 down to the present time, I have been more or less engaged, under the old and under the new laws.

2069. Under the old law, was it a general custom for you to act on one side, and some other surveyor on the other?—I have occasionally acted for both sides, but very rarely.

2070. Then the general practice was that you acted for one party and some one else acted for the other?—That was the general practice.

2071. And it was at their option to employ you or any other person, living either in John-street, Adelphi, or elsewhere?—Practically you could very seldom bring the incumbents to agree to one man, though I have often recommended it.

2072. You were employed at that time on account of your professional skill and knowledge, were you not?—Yes.

2073. You held no official appointment that compelled people to employ you?—None whatever.

2074. If the two surveyors, so appointed, could not agree, you got an umpire to arbitrate between you, I suppose?—There was sometimes very great difficulty about that; I have dealt with reasonable men who would agree as to the appointment of an umpire, and I have dealt with unreasonable men who would not so agree.

2075. Supposing that you could not agree, what would you do?—Squabble over it.

2076. Eventually, I suppose, you came to some conclusion by giving and taking a little on either side?—Of course it resulted in a compromise, which was usually very unjust.

2077. Each giving and taking a little?—A great deal; not taking, but giving.

2078. Supposing that you were acting for the party who had to pay, you would give more than you thought you ought to give?—Yes.

2079. And

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2079. And supposing that you were acting for the party who claimed to receive, you occasionally gave up what you thought you ought to receive?—Yes.

2080. Is not that the ordinary way of settling things if there is no umpire?—Of course; it has gone into the hands of lawyers, and there have been writs threatened, and such matters as that.

2081. Have you in the course of your experience known such a case to proceed to action?—Yes.

2082. How many such cases have you known?—Not many, because the expenses are so great.

2083. How many can you recollect?—I can recollect two at the present moment.

2084. Did those cases proceed to trial?—Yes, both of them.

2085. What were the points which were raised there?—I was thinking at the present moment of one which arose at Northiam in Sussex. I was acting for the claimant, the new incumbent. The incumbent had not claimed for his dilapidation, or rather had not pressed the claim when he first went in; but the house got so bad that he got a license for non-residence, and afterwards proceeded to press his claim.

2086. Were you concerned immediately on his going in?—No, I was not. Before I was sent to survey, the matter had stood over for six years. I was called in at last, because he was advised that he would lose his claim under the Statute of Limitations if it was not settled within a year. I made a claim amounting to a little over a thousand pounds; I met a surveyor, Mr. Smith of Hastings, who dealt with it, I think, very judiciously indeed on the other side, but nevertheless he did not agree with me to the full amount; he admitted dilapidations to the extent of over 800 *l.*; he gave no precise sum, but he advised that they were liable for dilapidations exceeding 800 *l.* I never knew exactly how he made up his amount; my amount was put in precisely. It then proceeded to action, but the parties seemed to be dilatory all through, and the action failed because some process was not taken within the seven years. I am not a lawyer, and I cannot tell you exactly why it broke down, but it actually did not come before the court within the seven years. The incumbent then turned round and sued his solicitors for neglect in not bringing the matter forward, and he recovered 500 *l.* from them. It was held that the dilapidations having been surveyed so late the full amount could not be claimed; and ultimately, I believe, the actual amount recovered from the solicitors was 500 *l.*

2087. What was the other case?—There was another case in Sussex, where there was great difficulty in settling it; there the amount was not very great, but I think that there were law proceedings in that case; I did not go before the court in the matter at all.

2088. Do you remember what the dispute arose about?—A very inadequate amount was offered, and it was finally settled by arrangement.

Mr. *Gregory.*

2089. Are those cases under the new Act?—Under the old Act; there the claim was a moderate one, about 113 *l.*, and something like 55 *l.* was offered in settlement.

*Chairman.*

2090. Was that claim resisted on the ground

*Chairman*—continued.

of excessive charge for certain things, or on the ground that certain articles or portions of buildings ought not to come into dilapidations?—On the general ground of excessive value.

2091. Not on the contention of dilapidation, or no dilapidation of particular portions?—No; another case which was ultimately settled by arrangement was this: a house was a very old house, and the late incumbent, having two or three livings, could not reside in it, and it had been occupied as cottages all through his incumbency. It had got, therefore, into a very bad state, and my estimate, as far as I recollect now, was about 190 *l.* This was stoutly resisted on the other side, and I may say that I had been asked to meet a person with a view to settle the matter whom I declined to meet, because I knew very well from having passed through the neighbourhood that his name was painted over his door as a wine and spirit merchant, and I did not think that he was a proper person to enter into an arrangement with.

2092. Suppose that he had given you all that you asked, what would have been the objection?—I should not have objected to that at all; but seeing that he would not give me half that I asked, that seemed to me to be objectionable. Ultimately, to avoid litigation, I suggested that the two parties should themselves come together, and they, a widow lady and the new incumbent, simply split the difference; it having been agreed by the patron that the building should in all future time be treated as cottages and not as a parsonage. That was how that was settled. The other case which I had in my mind at first occurred down in the Midland Counties, and that was the case of a pluralist. The question raised there went to the Court of Chancery, and was finally determined there; in fact, it arose out of the suit in the Court of Chancery that I was employed to go down and look at this place. The clerk in settling the estate would have ordered the dilapidations to have been paid if he had thought it to be a reasonable claim; there were no less than three other incumbencies concerned in it, and he settled the dilapidations on the claim made in all those three places; but in this one he would not do so because a claim had been made for timber which had been cut; however, I was desired to go into the whole matter, and my own view was that no claim could be maintained for the timber; and on my return being made the decision was taken that there was no claim for timber at all, and the new incumbent got the amount asked for actual repairs and no more.

2093. You had some guiding rule, I suppose, as to the principle of dilapidations previously to the passing of this Act?—Yes.

2094. Was the case of Wise *v.* Metcalfe the one that guided your views?—One had a general knowledge of decisions that had taken place even before that, but no judicial determination has influenced the practice of surveyors to the extent that that decision has; from the year 1829 down to the present time, there has been no other decision that has had so much influence, though there has been one important judgment by Lord Campbell settling the question as to glass-houses.

2095. But practically, up to the passing of this Act, when surveyors met they were governed by the rules laid down in that case, were they not?—The difficulty was to get surveyors to meet who knew anything about it. As I say, one was asked

*Chairman*—continued.

asked to meet a linendraper, or a spirit merchant, or something of that sort; the matter of the dilapidations was debated in a corner in the dark, and nobody knew really how it was determined.

2096. You had some practical text book as to dilapidations, had you not?—In my early days "Gibbons on Dilapidations," and "Elmes on Dilapidations," used to be considered good books; and, later, "Cripps on the Laws of the Church and Clergy."

2097. Previously to the Act of 1871, if you were acting for the new incumbent, as long as you got an allowance fixing the amount on the principles then laid down, were you generally content and satisfied?—By no means; I never met with anyone who was content.

2098. Then on what line of conduct did you proceed?—You were simply in a helpless state, and the matter must go.

2099. If you made out a statement of claim, I suppose you, being the party claiming and acting for the new incumbent, stated your views as to the amount?—Yes.

2100. On what principle did you go when you made out that statement?—Upon the principles laid down, I may say, in Wise *v.* Metcalfe, and I calculated it with the utmost detail.

2101. If you had that conceded to you, and you then made out your valuation, on the principles of Wise *v.* Metcalfe, did you want anything more?—Yes, I did.

2102. What more did you want?—Wise *v.* Metcalfe would not cover everything. For instance, we have had an important decision, as I have already stated, from Lord Campbell.

2103. What did not Wise *v.* Metcalfe cover?—The case of Wise *v.* Metcalfe, for instance, had no application to the procedure of surveyors at all; it proceeded on a review of the old ecclesiastical law.

2104. The case of Wise *v.* Metcalfe did not recognise surveyors, because the courts of common law had then to give a decision, the same as surveyors have to do now; but as to the law of dilapidations, what guided you beyond the case of Wise *v.* Metcalfe?—Such law as one found in the books.

Mr. *Gregory.*

2105. I think you referred to some subsequent decision?—Yes; Lord Campbell's was the most important.

2106. What was it about?—It arose out of a claim made to compel an incumbent to repair conservatories of rather large extent.

*Chairman.*

2107. That is a small question of detail?—It was a very large question there, for there was more than 600 feet in length of glass houses.

2108. But what I wish to direct your attention to, for a purpose which you will see presently, is whether there was any other principle that guided you in settling the amount of dilapidations previously to the Act of 1871, beyond that case of Wise *v.* Metcalfe?—One had some knowledge of the writings of Bishop Gibson, for instance, in his Codex; and his idea of dilapidations was somewhat wider; in fact, Wise *v.* Metcalfe narrowed the treatment of the matter from what it had been before that time.

2109. Did you consider it within your province, if you could get the money, to go beyond that decision?—I never thought it within my province to go beyond the law so far as I could ascertain the law.

*Chairman*—continued.

2110. But you say that Bishop Gibson's "Codex Juris Ecclesiastici" contains a much wider view, and that the decision in Wise *v.* Metcalfe has narrowed it; why did you not consider yourself bound by that decision in making your claim?—It was a decision formally obtained in a court of law. I did consider myself bound by it.

2111. Would you advise your client to go to law if he could not get any more than that?—I should not if the matter was opposed to the decision in that case; I never advised a client to go to law. I have always told him that he had much better submit than go to the expense of going to law.

2112. Since your appointment as the official surveyor in these two dioceses, in how many cases have you yourself been called upon to act?—In the diocese of London I have received 127 orders from the bishop.

2113. Before 1871, before you received an official appointment, when you valued a house did you go upon the principle that the house was to be made good, without reference to the wear and tear of time, or upon the principle of simply valuing the dilapidations which existed?—There is no difference, before 1871 or after.

2114. But when you met another surveyor, before 1871, and went into the question of dilapidations, as between the out-going and the in-coming incumbents, you acting for the in-coming man, did you go upon the principle that the house was to be made as good as new, without reference to the wear and tear of time, or simply that it was to be put into a state of tenantable repair?—I never went on the idea that an old house could be made as good as new.

2115. Upon what idea did you go?—That the actual defects in the old house must be made good. If you will allow me to mention one point; it is, I believe, universally admitted amongst surveyors, who follow the decision in the case of Wise *v.* Metcalfe, that is, I should say, surveyors who understand their business, that when a doorpost is rotten at the foot, where old doorposts almost always are rotten, you may splice that doorpost; that does not make it as good as new, because, to make it as good as new, you should put in a new doorpost. It was always admitted that a fair mend was justifiable.

2116. What should you do in the case of a beam being decayed at one end of it?—It depends very much on circumstances; a beam may be so very much decayed at the end that it ought to be renewed, or it may be so little decayed that by merely cutting off the end you may put in a corbel, and keep it in its place, so that it will do its duty as well as it ever did.

2117. Before the Act, supposing that a beam had been so little decayed that you might have put in a corbel, would you have considered that sufficient?—Yes.

2118. You would not have claimed more?—I ought not to have claimed more; I will not say that I have not claimed more, because you could not get what you ought to have, and you were obliged to ask for what you could get.

2119. How many cases have you had since the Act came into operation first, for London, classifying them into cases on vacancy and cases on order by the bishop?—I have had 127 orders

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from the bishop. I have completed the reports on 116 of those orders; 15 of those orders were voluntary, that is to say, on application from the incumbent, on Section 12 of the Act; one was a benefice on sequestration, and one other on complaint.

2120. Were all the rest on vacancies?—All the rest were on vacancies.

2121. Will you give us the same information with regard to Rochester?—The number of orders that I have received in reference to the two archdeaconries to which my duty extends in Rochester is 88, and I have made 76 reports on those. Those numbers in both dioceses extend down to the 1st of March in the present year from the beginning of the Act.

2122. How many of those were voluntary?—Twenty-three of those orders in Rochester were voluntary; two upon complaint, and one under a sequestration.

2123. Were all the rest on vacancies?—All the rest were on vacancies.

2124. In how many of these cases, taking them altogether, was your report appealed against?—In London there have been no appeals at all; in Rochester, down to that period, there were four appeals, and since that there has been one.

2125. Then in all the cases in London your report became absolute law?—Yes, without any further appeal, but subject to alterations allowed under the Act of 1871.

2126. Without any power either in the bishop or in any one else?—One continually has some debate with the incumbents interested, but it never went to any formal appeal, and was settled as far as the late incumbent was concerned.

2127. Therefore, when there was no appeal, no one could alter your report at all?—No, not after the period for objection had expired as regards the late incumbent.

2128. Then, supposing that the incumbent did not object within the month, your report became absolute law, did it not, both as regards the amount and as regards the particular things that were to be done?—Yes.

2129. Have you ever been called upon to carry out those works yourself?—Occasionally.

2130. I do not mean in your capacity as architect, but under the Act?—Never. It very nearly amounted to that in one of those sequestrations, but the incumbent died almost at the same time, and so it passed over, and I was relieved from it. I may say, in reference to your last question, as it stands at the present time that I am liable to carry out the repairs for one benefice in Rochester, but, pending the paying in of the money, there is no means of doing the work.

2131. What case is that?—It is a case of sequestration.

2132. And the sequestrator has not paid in the money yet?—He is paying it in by degrees; but the sum is very large, exceeding 700 *l.*, and it will probably take some years to do it.

2133. And you do not begin the repairs until the whole of the money is paid in?—The curate who is living in the house wishes some slight repairs to be done, and at the present moment he has had them done, and he is awaiting a visit from me to see whether I think they should be paid for.

2134. Is that in your discretion?—He ought not to have done the works without consulting me.

*Chairman*—continued.

2135. Is it in your discretion whether you will do anything or not until the whole of the 700 *l.* is paid?—It is.

2136. I see that in the diocese of London, in addition to the fixed fees, you are entitled to 3 per cent. upon the excess of 100 *l.* of the amount of dilapidations, whether you superintend the work or not?—It is so.

2137. And you are entitled to 5 per cent. if you take the superintendence?—No, that is in the sequestration cases. If the architect actually directs the works in the ordinary way he is entitled to 5 per cent; but that applies only in the sequestrated cases.

2138. In Rochester how is the 5 per cent. arranged?—It only applies to sequestrated cases.

2139. But do you not act as an architect also?—I have done so; I have been asked to do so.

2140. Are you not acting as architect at the present moment in the diocese of Rochester, in the cases where you were valuer for dilapidations?—Not in any case at the present moment.

2141. Did you value at Elstead?—That is not in my division, I have nothing to do with that; it is in Mr. Chancellor's division of the diocese.

2142. Did you make a valuation there?—No, I did not.

2143. Do you know Mr. Cox, the incumbent of Elstead?—Not at all; I never heard of him.

2144. Are you superintending the buildings at Elstead?—No, not at all; I have nothing to do with it; that is in the district of Mr. Chancellor; he is the surveyor of that district; it is in the other archdeaconry.

2145. He is the other surveyor?—Yes.

2146. But there are cases in which you do take the superintendence of the works as the architect, are there not?—It is an office which I do not wish to occupy, but I have undertaken it at the request of the new incumbent; but when I have been applied to to do so, I have pointed out that the Act provides, in my opinion, sufficiently for him to avoid the expense of an architect, and I have always suggested that he had better use me as far as he can under the Act, and save himself the expense of the architect.

2147. What work do you do for the 3 per cent.?—I make the first survey and make the report to the bishop, and send copies to the two incumbents.

2148. Does it include any plans for the works?—No.

2149. Supposing that you make plans, you charge extra?—For dilapidation works it would be a most exceptional case that required plans.

2150. When you have carried them out as an architect what do you do?—You do not want any plans for them, the plan is in the old building in existence; you are only acting on an old building. I have in former times claimed for the wing of a house that had been altogether pulled down, and it has been allowed to me; but, of course, that would require to draw a plan for it for the rebuilding, but not for the valuation of dilapidation.

2151. Do you make out a specification?—In such a case as that, one must do so.

2152. But do you do so in the case of the 3 per cent.?—I have not had such a case as a wing wholly gone under the new Act.

2153. You have a certain amount of fees ranging from two guineas up to six guineas according

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according to the extent of the buildings, have you not?—Yes.

2154. In addition to that, you are entitled to claim 3 per cent. upon the amount to be expended after the first 100 *l.*, are you not?—Yes.

2155. For that 3 per cent. do you make out a specification of the works?—I make out the specific detail required by the Act.

2156. Is that sufficient for the builder to contract?—I intend it to be so.

2157. Have you one of those Reports with you?—I have not; but I would readily furnish one.

2158. If a new incumbent has paid in the money into Queen Anne's Bounty, and wishes to employ his own architect, is he in any way bound by that specification?—Of course he is; the incumbent is bound to carry out the works specified.

2159. In exactly the same way as you have described?—No doubt.

2160. And he could not alter the pitch of a roof?—The Act provides for his getting permission to alter works.

2161. Have you had any cases where permission has been asked for?—Many.

2162. Does the bishop always refer to you?—I should say not the bishop, but the incumbent wishing to make the alterations does usually.

2163. Does the incumbent apply to you?—He applies to know what I think of them first.

2164. Then must he get the bishop's sanction afterwards?—He always has obtained it in the instances that have occurred in my district. He has to obtain the sanction of the patron as well.

2165. Do you know of any case of the bishop giving his sanction for an alteration without coming to you?—The bishop never came to me, but the incumbent has done so. I know that the bishop's sanction has been given to alterations without myself having been consulted at all.

2166. In that way your specification might be wholly useless, might it not?—It might be superseded.

2167. Do you think that in other dioceses where there is no commission paid, they give a specification?—I know as a matter of fact that they do.

2168. You are vice chairman, I think, of the society of official surveyors?—I am.

2169. Is there any rule laid down amongst you that you are all to give specifications?—The law is so; and the society has promoted the making of specifications in the most specific manner. I may mention that with a view of promoting specifications being made in the most efficient manner, the society has collected 42 specifications from 28 surveyors, and their latest work has been to melt those into one exemplar specification, with a view of showing as completely as possible what subjects should be included in a specification; and they have also, as it were, tabooed certain items in those specifications, and have put them into a form of warning, in order to show what are objectionable items of specification.

2170. Will you put in a specification as an example?—I will.

2171. Supposing that the alteration is sanctioned by the bishop without consulting you, what do you do about your final certificate?—I ask the incumbent to show me on what authority the alteration has been made, and if the authority is sufficient, I certify accordingly; that is to say, he gets the whole of the money. He gets it under two certificates; he gets it for the works that he has done in compliance with the original order, and he gets the balance for the works which he has superseded under the Act. The Act does not make it necessary for the incumbent or the bishop to consult the surveyor at all about it.

2172. But you have in that case to give what is called a special certificate, have you not?—Yes.

2173. Is there an extra fee for that?—There is, but I have never had an extra fee, for this reason, that I adopt a form of certificate under Sections 44 and 45, which enables me to make it special by merely adding the number "50," the section which requires this special certificate. There is an extra fee appointed for Section 50, but I have never availed myself of it.

2174. When you make a survey, do you confer at all with either the old incumbent or the new incumbent?—I confer with both. Of course the old incumbent is dead and gone in the great majority of cases, but I confer with those who represent him.

2175. If he has changed his living he would not be practically gone?—No, of course not.

2176. Do you in that case confer with him, and hear what his views are?—That depends upon himself; sometimes he does not care to be conferred with; but one naturally goes to the old incumbent. The very first introduction to the place is to inquire what are the subjects for dilapidation, and the old incumbent is the man who can best inform you, if he is living; so that one is, as it were, at once in communication with the old incumbent. I myself make it a rule always to communicate with the churchwardens.

2177. But you do not always, as a rule, communicate with the incumbent?—Not as a rule, but yet one may say that one never escapes it.

2178. Do you give them notice that you are coming?—Sometimes I do, and sometimes I do not; it depends upon their own wishes.

2179. Have you got a form of order from the bishop with you, directing you to go?—No, I have not.

2180. Who sends that to you?—It comes through the bishop's secretary. It is in the one diocese a printed, and in the other a lithographed, form, adapted to the various sections under which it is intended to operate. The secretaries could furnish to you the forms they use.

2181. In cases of the first portion of the Act, on complaint, you determine the time within which the works are to be executed, do you not?—It is the law that the surveyor shall appoint the time within which the works are to be executed.

2182. But in cases of vacancy, you only set out the detail and the probable cost?—That is all, and the Act itself fixes the time in those cases.

2183. Have you known any instances where people have complained that the amount assessed has been insufficient to carry out the detailed specification?—Yes.

2184. What do you do then?—I have nothing to do with it, I may say. If it has become a valid report, I can do nothing on such a complaint as that.

2185. In that case they would complain of your under-estimating, would they not?—I have taken a good deal of pains to be informed of the matter,

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matter, so that one may instruct one's self, and learn by experience, as it were, how one ought to frame one's valuations. In two cases the amount of the work has been within my valuation; in every other case it has been beyond my valuation.

2186. Then the new incumbent has to pay that himself, has he not?—The new incumbent has to pay it himself; but then he has the control and management of the work in his own hands, and therefore he can, in great measure, arrange it; and my experience of it is that the new incumbents are content to pay a small sum, and to have the work in their own hands.

2187. Does your valuation include the per-centage of the architect?—No, I am not allowed to charge that; the valuation is simply on the work.

2188. But a very large number of the fees that are settled in the different dioceses contemplate a payment of 5 per cent., do they not?—I am not able to say that there is no fee throughout England that contemplates that.

2189. Is there not a payment for superintendence of work under the 45th section?—That is for sequestrations.

2190. Does not that contemplate such a payment?—Then you supersede all other fees.

2191. In the case of sequestrations, do you add the 5 per cent. to your estimate?—No.

2192. Why not?—Because I am instructed that it is not lawful do so. I think that in any amendment of the Act that should be provided for, because it creates a deficiency. It is a matter that looks more deficient on the face of it than probably it is. I have pointed out the fact that I have but little experience in cases of sequestration; but from what I have heard, I think that, practically, the sequestrators do not object to pay the 5 per cent. They consider that having employed the man they are bound to pay him; but some sequestrators hold that they are not bound to pay anything that the Act does not provide for. I think that 5 per cent. upon cases of sequestration should be charged in addition.

2193. In making your estimate, do you put in the 3 per cent. that you get paid to yourself?—No, I am not authorised to do so. The fees are chargeable to the new incumbent, and not to the late incumbent.

2194. Therefore that forms no part of the charge against the incumbent?—It does not against the late incumbent; I can tell you the fees that I have charged and received in every case throughout.

2195. Then the per-centage amount of 5 per cent. upon sequestration, and 3 per cent. to the surveyor, and 5 per cent. if the incumbent employs an architect, are all extra payments that the new incumbent has to make irrespectively of what he gets, are they not?—They are all extra payments, but the sequestration does not affect a new incumbent.

2196. You say that there were two cases in your district in which the amount of the work was within your valuation; do you know from your own knowledge how many have been in excess of the amount?—In two cases the works have been under the estimate; I know of my own knowledge, for I have made it my business to inquire, that in every other case there has been a slight excess; but I think that in only one case it exceeded the amount seriously, and I myself was

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rather surprised at it. My valuation, if I recollect rightly, was about 129*l.*, and I think the works have cost about 159*l.* The incumbent managed extremely well, and I am therefore not blaming him in the least; but nevertheless the works did exceed the estimate, and I can scarcely account for it.

2197. Have you heard of any difficulty with regard to new incumbents having paid the whole of the money into Queen Anne's Bounty, and then having to find it again for doing the repairs?—I think, perhaps, some such case has occurred.

2198. Supposing that a man wished to employ his village tradesmen, a carpenter, and blacksmith, and mason, they would want the money as the work went on, would they not?—There is an ordinary understanding that the work shall be paid for soon after it is done; or, where there is a large amount, that something should be paid on account as it goes on.

2199. Who has to pay that?—Queen Anne's Bounty.

2200. But Queen Anne's Bounty cannot pay it until they get your certificate, can they?—Certainly not.

2201. I presume that you would not give your certificate until the work was done to which the certificate applies?—Certainly not; I should not pay a man before he had done his work.

2202. But a man may want his money as he does his work?—Of course such cases do occur; I do not remember one at this moment, but I dare say I could with a little pains, look out some three or four cases where that has occurred, and where the incumbent has, in fact, paid the money himself as the work went on, being anxious to employ his neighbours, the village tradesmen.

2203. Then he has to find the money to that extent twice over, has he not?—Exactly so, but he need not employ that man; he may employ some other man.

2204. Would he make any charge for the time during which he is kept out of his money?—No, it is a question of neighbourly feeling as to employing one of his own parishioners.

2205. He might get a tradesman in a large way of business who would take the whole thing, might he not?—Yes.

2206. Do you find that that is generally done?—My experience is that up to about 200*l.*, it can be done without any certificate intervening; but that over that amount you usually have to give a certificate on account, and sometimes within that amount.

2207. Have there been cases in which you have declined to give your certificate immediately?—No, I think not.

2208. Have there been any cases in which you have refused to give your final certificate?—Yes, one.

2209. From what did that arise?—From the incumbent having arranged to exchange some glebe land, and he expended the money on the land which he took in exchange, and not on the land appointed under the Act. He has never completed the arrangement; the arrangement has not become lawful at the present moment, and, therefore, the matter is standing over until that is done.

2210. But the injury was to the man who got this glebe land, and not to the church; it would be

*Chairman*—continued.

be rather a benefit to the church. You say that he spent the money on the land that he was receiving in lieu of spending it on the land that he was giving up?—He neglected the glebe land, and spent it on the land which does not belong to the church.

2211. I thought you said that there was an exchange going on between two pieces of glebe?—It was proposed a piece of glebe for land of a private owner, but so far as I am aware, it has not come to anything at the present moment.

2212. Then he has not carried out the repairs?—He, unfortunately, spent the money upon private property, as it were.

2213. What class of repairs are they?—It is a small matter; I think that it is about 15 *l.* for repairs to gates and field fences.

2214. What was the whole amount of the dilapidations in that case?—I may not be quite right, but I think that it is about 180 *l.*; it is about 20 *l.* over or under 200 *l.*, I think.

2215. Has he got any of that 180 *l.*?—There is about 15 *l.* standing at the Bounty Office at the present moment; the rest has all been paid to him.

2216. Have you had any serious questions with regard to the payment of your fees?—I have.

2217. In how many cases?—Four gentlemen have written very strong letters, refusing to pay me a guinea each.

2218. Is that the extent of it?—That is the extent.

2219. Have you ever had occasion to threaten any of them with proceedings for non-payment?—I never have threatened proceedings.

2220. And all your fees have been paid you, except in those four cases?—I can tell you exactly how much has been paid to me, and how much is outstanding.

2221. But they paid them in other cases, after some little discussion, I suppose?—Really I do not think that I have ever had a discussion about it.

2222. Do you receive your fees at the beginning or at the end?—They are paid at various times. Some clergymen send a cheque the moment they get the report, and some keep it back until the final fees have accumulated. It is very variously dealt with.

2223. Some pay at the beginning and then pay as you get the money for them?—No; I think you may say that where they do not pay at the beginning, it is generally left to stand over until the final settlement.

2224. Do you charge for your final certificate at the beginning, before you have given it?—No, never. I mark upon every report that I send out the authorised fee.

2225. How many reports do you send out, say on a case of a 600 *l.* dilapidation?—Only one report.

2226. Then what do you mean by every report?—On every one of those 192 reports that I have sent out (that is, referring to 192 benefices) I mark on the face of it the amount of the surveyor's fee for the survey and the report.

2227. Have you a copy of one of those reports, with those fees marked on it?—I have not one with me, but if you will allow me, I will send for a few reports.

2228. You say that you mark it on the reports; do you put down the charge for the final certificate?—No, never then.

*Chairman*—continued.

2229. When do you get paid for your final inspection and final certificate?—After the final inspection and final certificate are made.

2230. Then you must get those fees twice, at all events?—I get the fees sometimes at twice but never twice over.

2231. When there is an intermediate certificate, what do you do then?—I have never asked for the fee at the time; and I have never been paid on any intermediate certificate.

2232. But you are paid for intermediate certificates, are you not?—It has always been at the end.

2233. Then what I gather from you is this, that you charge, in the first instance, when you have made out your specification and report, your fees for journeys, and so forth, and the 3 per cent.?—I charge for what has actually accrued up to the moment.

2234. Does that include the 3 per cent.?—That includes the 3 per cent.

2235. And then you make no other charge until you have given your final certificate, and then you make a charge for all the immediate work; is that so?—Exactly so.

2236. And you say that some of the incumbents pay you the first portion as soon as you have delivered your report, and that others do not pay it until they pay it all?—Exactly so, and some of them keep it back rather a long while.

2237. Will you state to the Committee what objections occur to your mind against a large number of surveyors being employed in each diocese, so as to give incumbents an opportunity of doing what they did before the Act came into operation, that is to say, selecting their own surveyor?—I think that the objections to a great increase of official surveyors are very large indeed, and rather numerous.

2238. Will you state them?—Personally, as a surveyor, one ought not to complain, because it would open a rich harvest to the surveyors, which would last for a time; but I do not think that it would last very long; I have heard most of what has occurred in this room, having been here every day except one; and except that I was not here when the Bishop of Peterborough was before the Committee, so that I have heard everything else that has transpired in public, but I hardly know which particular scheme you are speaking of at this moment.

2239. Generally, what objection would there be to the appointment of a number of certified gentlemen as competent surveyors from whom the incumbents, out-going and in-coming, might select and settle matters in the same way as they did under the old law?—One objection would be that then you could not possibly bind them by fees; they must charge what they like; multiplicity of surveyors would tend to want of uniformity. The appointment of a close college of qualified surveyors would tend to convert that body, however numerous, into an oligarchy, and it would be liable to be held that no outside men were qualified to criticise them. As the matter now stands, the one surveyor engaged by the bishop's order on any particular case is, and feels that he is, open to criticism of the freest possible description; very much, as I think, to the advantage of all parties.

2240. Why?—You could not appoint any scale of fees that a set of gentlemen who are picked out from voluntarily would be bound by. You might

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might appoint the fees, but they would not be bound by them.

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2241. They would not be qualified surveyors unless they chose to accept the offer?—A surveyor would be no more bound than under the purchase system officers were bound to take only the price of their commission.

*Chairman.*

2242. You are bound here, are you not?—Yes.

2243. Why may not twenty men be bound as well as one?—For this reason: there would be competition amongst them directly. It would be very soon suspected or believed that one man amongst them was better for out-going incumbents, and that another was better for in-coming incumbents, and the work would go to those two, and they would have any fee that they liked to ask for.

2244. But if people choose a surgeon or a physician, do they not go to the man who they think is the best?—Yes, and the clergy now have the whole kingdom before them, and they go now to the man they like best. They come to me now, and consult me privately.

2245. But can an out-going or an in-coming incumbent go to anyone else but you in London?—He can choose his own surveyor; he cannot choose the official surveyor.

2246. But his own surveyor has no power, has he?—Exactly so, but he never had any power.

2247. He had this power, that if the surveyor advised him that the amount was right, he could go to law to enforce it?—So he can now, if his surveyor advises him that the amount is wrong, or that he has rights which the official surveyor has neglected. I have been repeatedly consulted on that point.

Mr. *Beresford Hope.*

2248. I do not think that you understand the question, it is this: What objection is there to there being a larger number of surveyors than there are now under the conditions of the Act; that is to say, that instead of having one surveyor to go to in Winchester there should be six, or, if you please, twelve?—That is a very broad question, and one wants to know what rules are going to be laid down; but I see great difficulties in the way of laying down rules. If an incumbent was at liberty to go to anyone, say out of 12 surveyors, in one diocese, you have first to suppose that the incumbent is living, and in a great many of these cases he is not living, but he is dead.

*Chairman.*

2249. But there is somebody to represent him, I suppose?—Yes, there is somebody to represent him. Then you have to wait till a new incumbent is appointed before any agreement can be made: then you have a squabble to begin with as to who is to be appointed. My belief is that they would not succeed in agreeing at all, for it was a very rare case in which they ever did succeed in agreeing as to the surveyor to be appointed, but if they do succeed then you have a partisan appointed instead of an independent man.

2250. Supposing that there are 20 surveyors in the diocese instead of two, and that each of those 20 has the same power that one has now, and that if they did not call in one of the 20 within a limited time, the bishop would appoint one, would there be any difficulty?—In the first instance there would be greater delay, and in the second place you would have a partisan appointed instead of an umpire. The great excellence of the present arrangement (I am not saying that no better one could be made) is, that instead of the loss of time and the squabbling of two surveyors, you come to the umpire at once.

2251. Supposing that instead of this clause saying that the bishop shall within three months direct a survey, the words were that he should direct a survey, unless a surveyor were selected within that period, how would that act?—The surveyor would lose the quality of umpire altogether. The period of three months cannot be connected with the choice of a surveyor. I have known six months elapse during which such a choice could not possibly be made. The family of a deceased incumbent is entitled to occupy a house for two months, and the three months allows only a reasonable period of one month in addition for the action of the surveyor to be called in, as it is now appointed.

Mr. *Beresford Hope.*

2252. When a man calls in a doctor to attend him in an illness, nobody reproaches the doctor with being a partisan; do you not think that you are unconsciously casting a slur upon your own honourable profession when you say that the surveyor would become a partisan instead of being an umpire?—The doctor's is entirely a private matter; but here you are coming upon a public question, and the question is whether a man has a right to impose his own professional man on his successor and on his patron, and on the public, for that is what it amounts to. In the public courts lawyers and barristers are retained as honourable men, but as partisans to support a one-sided view. Clergymen under the Act can select any adviser they choose, for their own purposes, and to criticise the umpire appointed under the Act.

*Chairman.*

2253. But this Act contemplates the rural deans and archdeacons appointing any number of surveyors they choose?—Decidedly so, and what have they appointed? Three is the outside number that they have found it good to appoint anywhere, and that number they have appointed in several dioceses.

2254. What would be the objection, supposing that the clause ran this way: That within three months after the benefice was avoided, unless the parties themselves had selected one or other of the diocesan surveyors, the bishop should nominate a surveyor, leaving to the one selected all the power that you have now?—I think that the out-going and in-coming incumbents would rarely agree as to the choice of a surveyor, and when they did not, and in the frequent circumstances in which they could not, the loss of three months might often be a needless and inconvenient delay.

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2255. You will not go back far enough; we are here to look into the whole matter, and we are not satisfied that the rural deans have exercised a wise discretion in choosing only three surveyors;

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surveyors; we do not say that they have not, but we are simply going into the matter from the very root, and we want you to give us good reasons why the rural deans did right in selecting no more than three surveyors in any case, and why they might not have done as well, or better, if they had made a larger list?—I will not say that the rural deans did right; they were not inspired to do the best thing, but they did the best thing in their judgment.

2256. We want you to prove that they have done the best thing; you have shown yourself very fairly and rightly a believer in the present system as the best?—Do not think that, because I am not wishing to lay that view before the Committee at all.

*Chairman.*

2257. Supposing that there was a surveyor, a competent man, appointed for each rural deanery, then there would be only one in that limited district; and supposing that the in-coming and outgoing incumbents might have a choice from any of six, or five, or four of those ruridecanal surveyors, what harm would there be in that?—I think that it would lead to a great deal of squabbling. In the first instance, and ultimately after a few years, it would come to this: that the whole of the work would fall into the hands of two men who would get the reputation of being, one the cleverest on behalf of outgoing incumbents, and the other the cleverest on behalf of in-coming incumbents.

Mr. *Beresford Hope.*

2258. Is not that the principle of natural selection, which philosophers tell us is the right thing?—That is what it would come to, and then you would come back to the old difficulty of no umpires. The Act of 1871 appointed the umpires. I am not saying that the present is the best possible system, and if I could see another and better I would adopt it. Here are surveyors now working at about half of the remuneration which they ever worked at before. In your case you will have surveyors who certainly will not be bound by the fees, because when men get this reputation they will say, "I am ready to do the work, but cannot be bound by those miserable fees on that list; you must make this good to me"; and then, heart and soul, the chosen man like an able partisan, would throw himself into the cause which he was paid to maintain.

*Chairman.*

2259. Supposing that there was a certain number of qualified surveyors appointed in each diocese on condition of charging no more than was included in a settled table of fees, why should you suppose that those men would run the risk of pains and penalties by charging more than those fees?—Then they would decline the employment altogether, unless the fees secured to them were much more remunerative them now.

2260. But supposing that they did not decline, do you see any reason why the clergy should not have the choice now as they had before?—I have endeavoured to show that there would be harm in returning to the old system. I mean to say that the present system works better for the clergy than the former one did. If it does not work better for them it is doing nothing.

2261. If they say the contrary?—The great majority of them do not say the contrary; the great majority say that it works well, and works very satisfactorily.

*Chairman*—continued.

2262. Then you are opposed altogether to an extension of the number of surveyors?—No, not altogether.

2263. To what extent would you go?—I think that the rural deans have exercised a wise discretion. Of course, at the first appointment of surveyors there was nothing to lead them at all. Then, in 1874 the whole of the dioceses underwent a revision, I think almost without exception, more or less; and the rural deans have seen fit in the diocese of York to increase the surveyors from two to three. In Canterbury they have thrown it into the hands of one instead of two; in Salisbury they have increased it from two to three; in St. David's they have increased it from one to two; and in Gloucester they have made a slight re-arrangement of the diocese, and superseded an inefficient man.

2264. Do you think that they were wrong in confining it to one surveyor for the diocese of Winchester?—I do not think that they were, for the diocese of London at any rate.

2265. If, as time has gone, they have found it better to increase the number in several dioceses, do you think that one surveyor is enough for the whole diocese of Winchester?—I have never heard any complaint that has arisen from the diocese of Winchester.

2266. Do you think that it is a beneficial thing or an unbeneficial thing for the diocese of York to have three surveyors instead of two?—I know that things worked very badly in York under the surveyor who was superseded. I think that the getting rid of an inefficient man and appointing two in his place has been a decided benefit.

2267. Is there any power in the Act as to the surveyor appointing a deputy?—There is not; it was a condition made upon my appointment that I should not appoint a deputy.

2268. Supposing that the surveyor for the diocese of Winchester were taken ill, what would happen?—I think that a provision should be made, allowing the bishop to appoint a surveyor temporarily for three months; because, although I am not aware of any difficulty having occurred on that score, it might happen, and it would bring the work to a standstill.

Mr. *Beresford Hope.*

2269. We have had a good many clergymen before us who have thought, without entering into the details of the Act, that the surveyors have worked it in a way which presses very hardly on their pockets; that they have taken up with the notion of a state of ideal perfection in a parsonage which is not at all according to common sense, and not the condition in which a practical tenant for life would require his father, or his predecessor in a settled estate, to leave the house; thereby having entailed heavy pecuniary expenses on a professional class who are notoriously the poorest of all professional classes, viz., the clergy. You represent the other party in the controversy, the surveyors; I should be glad if you would explain to this Committee (and we shall listen to you with the same attention as we have listened to the clergy) what the policy of the surveyor class has been in their dealings with the clergy class in the working of the Dilapidations Act?—The surveyor is as it were pushed along a very narrow ridge. Here is a man on one side pushing

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him in one direction, and a man on the other side pushing him in the other.

2270. Who are those two men?—Those men are the out-going incumbent and the in-coming incumbent, and their respective interests. I will venture to mention one, because he has been before you, and he mentioned my name; I refer to Mr. Astley. If I give my opinion, which I think it is rather difficult to do on a case that is pending, I think that gentleman is exceedingly exacting towards the outgoing incumbent, and therefore I must say that I am not very willing to be led by him; but he has furnished me with a most formidable list of objections to my report.

2271. I want to put this case before you: you are called in as a surveyor to deal with a parsonage of the average class; it is not a good house, but it is not an uninhabitable house; it is not in very good repair, but it is a house which a poor clergyman, out-going or in-coming, would rather make the best of than put his hands into a very shallow pocket; how would you deal with that ideal house, which is probably the house which you generally have to deal with?—The law of the case is that you must not expect to make a better house of it. My own view of the matter, and I think that it is one which is shared by diocesan surveyors generally in these cases, is that you have to make an old house as good as you can, and to make it go on. The art of dilapidations is the art of making an old thing go on, and not the art of making an old thing new.

2272. When you say that you have to make it as good as you can, do you mean that it should be as good as it was on the day when it was built, or that it should be sufficiently habitable, with fair wear and tear?—May I read a definition of dilapidations which has struck me as being a particularly good one? It is not my own definition; it was drawn by a firm of solicitors about 25 years ago, and I think that they seem to have known what they were about as thoroughly as any one well could do. A clergyman under due authority, in perfect accordance with law, chose to let certain buildings on lease, and the object of the lease therefore was that the incumbent should not be liable for any dilapidations, but that his tenant should be liable to the same extent that he was; and therefore it was applying the ecclesiastical law, you may say, in the case of a layman, and it goes just as far as ecclesiastical dilapidations do go, and no further. The terms in which he bound the tenant as to repairs were these: "And the said A. B., for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to the said vicar and his successors, that he the said A. B., his executors, administrators, and assigns, shall and will from time to time, and at all times during the continuance of the term hereby granted, at his and their own costs and expense, well and substantially repair, amend, maintain, uphold, glaze, tile, paint, paper, scour, cleanse, and keep in repair all and every the said messuages or tenements, outhouses, erections, and buildings hereby demised, and every part thereof, and all and every the windows, wainscots, rooms, floors, partitions, ceilings, tilings, walls, rails, fences, pavements, gates, sinks, privies, drains, wells, and watercourses thereto belonging, together with all such erections, buildings, improvements, and additions whatsoever, as at any time or times during the said term shall be erected or made upon the said premises, or any part or parts thereof, and shall and will save, defend, and keep harmless and indemnified the said vicar and his successors, and his and their executors, administrators, and assigns, of, from, and against all actions, suits, costs, charges, damages, and expenses whatsoever, which he, they, or any or either of them shall or may sustain or incur for or by reason or by means of any dilapidations or want of reparations in, to, or about the said demised hereditaments and premises during this term." May I call your attention to one particular point. The man who drew this thoroughly knew what he was about; he omits, you see, inside papering and painting, for which an incumbent is not liable, but he includes almost everything else in the way of repairs that you can well think of.

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2273. This does not come to my point yet. In short, you contend that you would report upon a parsonage house according to the principles conveyed in this recapitulation?—That recapitulation agrees thoroughly with Wise *v.* Metcalfe.

2274. In short, you make what you have just read your instructions as to the principles upon which you go over a parsonage house for the purpose of valuing dilapidations?—Yes; I think that is as good an idea of instruction as I ever met with.

2275. I will take windows: if you found that an old-fashioned parsonage had casements that let in a certain amount of wind and weather, would you order those casements to be made temporarily weather-tight, or would you substitute sashes?—I should not order him to substitute sashes. I have no right to do so; that would be unlawful.

2276. Supposing that you saw that the casements (as we know casements do) never could work as windows ought to work, but that if you left them as they were he would probably put in sashes which would be weather-tight, would you think yourself bound to order the substitution of casements when you knew that those casements would be got rid of as soon as your back was turned?—One could not know that; but my policy is to repair the casements if there is anything wanting repair upon them, and I cannot look at their original defects. For instance, all leaded windows will let in wet and weather, but unless they want repair there is no charge on the late incumbent.

2277. Then you look upon yourself as a kind of inevitable fate which comes down upon the clergyman to make him reinstate what there is there, when common sense and experience of the world tell him that the thing would be a blessing or the reverse of a blessing to him when it was reinstated?—I do not do that; I make a charge upon the window, which the late incumbent has to pay to the new incumbent. If the new incumbent sees fit to apply the money differently and better, he is at liberty to do so. I should not find fault with a new incumbent for putting sashes instead of casements, and applying the money towards doing that.

2278. We understand that unless the bishop comes to the rescue, the man finds himself under the inevitable necessity of carrying out the literal items of the surveyor's report?—As I have already stated, I have known many instances of a variation being made by permission; and if I found the variation an improvement, I should never interfere with it.

2279. The

Mr. *Beresford Hope*—continued.

2279. The Bishop of Peterborough explained to us that that was his policy, but we have reason to suppose that in other dioceses, and by other more scrupulous bishops, the surveyor's report is taken as Gospel?—Generally, I believe that the bishops hold that they have not power to vary the material parts of the report without cause shown.

2280. Do you think that the bishop's own common sense ought to be sufficient tribunal for varying the report? In this case of the casements, do you think that the bishop ought to have the right to vary your order without calling in another surveyor?—I think that for the bishop to substitute sashes for casements would be unjust to the new incumbent; he would then be compelling him to put a better thing in the room of an inferior one.

2281. If you reported on an old parsonage house with worn-out casement, and the new incumbent said: "I will not make the casements good, for I know that casements are a barbarous form of window, and I prefer sashes," do you think that the bishop would be bound to hold him to carrying out your report, and putting in the casements?—No; I do not think that the bishop would hold him to that; I know that no surveyor would hold him to that.

2282. Do you not think that the Act is defective in not giving an elasticity in that respect?—No, I think not. You must remember that there are two parties concerned, the late incumbent and the present incumbent. The bishop orders what the late incumbent shall pay, and upon what works; but that does not prevent the new incumbent doing better, if he sees fit. It would be very unjust to put that into the report, thereby making the late incumbent pay for it.

2283. I am talking now of the new incumbent; how far do you think that the new incumbent is bound literally to carry out your orders; for the surveyor's report is looked upon as orders?—I think that he is bound to carry out the bishop's, I will not say the surveyor's order, because it is not so. One gives the fullest opportunity for any suggestion to be made, and, finally, it becomes the bishop's order. He is bound to do it no worse, but he may do it better.

2284. Supposing the case of a man who came into his living before the present Act passed, and who had, accordingly, come into his living on the habitually easy terms with his predecessor which previously existed; and that you, on reporting, found all the windows, being easements, worn out, letting in the wet and the wind at every corner, the consequence being that they were very expensive to reinstate; but the expense being no fault of the outgoing incumbent, but rather the misfortune of his having come into a house which had been built on a bad and barbarous principle; then would you make this poor fellow's representatives pay a heavy sum for the calamity of his having been presented to a living, with a house which was built upon the best principles that existed in the day when it was built, but which had proved since to be a defective principle; do you not think that that is very hard upon him?—The surveyor's report, if properly made, will not make any alteration at all in the nature of the building.

2285. I must call your attention for a moment to Section 16 of the Act, which says: "If no objections to the report shall be made, then, at



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the end of the period limited for making objections thereto, the report shall be final; and if objections shall have been made, then the report, as modified by the bishop's decision, shall be final"?—That is on voluntary cases or complaint.

2286. In going to the principles of the Act, one must deal with all cases?—The special provisions of that apply.

*Chairman.*

2287. You do not want the bishop's order for that; the report becomes law then, does it not?—The report becomes law if no objection is made, and it does not go to the bishop for decision at all; he has a copy of it; there is only one incumbent to deal with in that case.

Mr. *Beresford Hope.*

2288. Supposing that the old parsonage was, like many old houses, composed of a lot of small and inconvenient rooms, and that the outgoing incumbent had knocked down one or two of those partitions, and had made more shapely and more convenient rooms, and left it, therefore, a better house, are you compelled to order him, and do you think that you do an equitable thing in ordering him, to pay the expense of putting up again those partitions which he has pulled down?—I should say not; and I can give a reason why I should say not; I speak for myself, but I do not doubt that you would find other surveyors would say the same: that when one comes upon alterations that have been reasonably made, one does not ask a clergyman to produce his faculty; and I think it is only reasonable on the part of the surveyor to admit a reasonable alteration that has been made; that is my principle.

2289. I must examine you on behalf of your society: is it your opinion that your brethren act upon the same principle?—That is the principle of the Society of Associated Surveyors.

2290. And all the surveyors, except one or two, belong to that society, do they not?—I think there are some five who do not belong to it.

2291. In what dioceses?—I think one is in Salisbury, three are in Exeter, and one is in Llandaff.

2292. This morning an archdeacon, who does not belong to any of those dioceses, informed me that a case had come before him of a tottering wall which a former incumbent had built in his garden; it was a detriment to the glebe, but, because the wall was there, the surveyor insisted on the wall being made good, to the great expense of the clergyman, and to the detriment of the property; is that consistent with what you tell me now are the principles of your association?—It is not consistent with them.

2293. Then, if your association make this rule (which I am very glad to hear), how do you account for a gentleman who belongs to it having so little appreciation of the rules of the society which he has voluntarily joined?—I should say that most likely the new incumbent insisted upon his extreme rights, because that is the way in which I have been defeated myself.

2294. It was the grievance of a new incumbent. My friend told me that the new incumbent felt himself very much aggrieved at it; or else perhaps it was a voluntary survey. In short, the surveyor saddled the living with a repair of a wall which was tottering, and in itself a nuisance?—In the voluntary cases, the surveyor



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is often obliged to consider himself as standing in the place of an absent man, and that rather alters the case.

2295. Have you any instance of the working of the Act which you would like to bring before the Committee?—I can bring some instances before the Committee bearing on this point. I formed the opinion that a certain gate and fence were really useless, and that the place was better without them; but I was informed that the patron of the living considered that it ought to be restored. It had disappeared some five or six years, having been removed by the late incumbent, he thinking it a nuisance. I looked at it, and I suggested to the new incumbent that I quite shared the opinion of those who thought that the place was better without it; he said he differed from me. Then I said: "If you say that it must be restored" (knowing as I did that the patron held the same views), "I see no alternative but for me to put in what I really think is an unnecessary article." Accordingly the order was made; it was not a very great matter; the fact is, of course, that the orders are made up of little matters and not of great matters; I think it was about 14*l.* or 15*l.*; but in the end all sides came round to my opinion, and they applied to the bishop for leave to omit this very thing which they had been so strenuous in having put in in the first instance; I think the surveyor was certainly the wisest of the party in that case.

2296. It came out in evidence before the Committee that the surveyor in one of the dioceses, which is not one of the excepted dioceses, ordered some long door staples to be taken away, because he thought them old-fashioned, and short door staples to be substituted; do you think that that comes within the principles of your association?—I should like to see the doors; but I am not prepared to say that surveyors are wise at all times; I wish they were. The clergyman in that case spoke of Mr. Maberley, of Gloucester, who has been superseded for inefficiency.

2297. So we all do; but it being the unwisdom of members of your society that has created this grievance, we are putting you on your defence in behalf of your society; we have heard the case against you, and we desire that you should make out the case for your society?—I am quite willing, and I wish to speak about the society, but I think the mere assertion of the clergyman who made that statement is not conclusive.

2298. You have just stated in evidence that though you generally meet the in-coming incumbent, and also the outgoing incumbent, supposing that he is still alive, you do not make a principle of soliciting an interview between the two when you make your survey; is that only your own practice, or is it the practice of your brethren also?—I make a practice of getting all the information I can beforehand in the best way I can. I believe it is the rule of Mr. Clark, of Canterbury diocese, also actually to see the parties. Sometimes they have gone a long way off, and it cannot be done.

2299. In what light do you consider the incumbent, out-going or in-coming; do you consider that he is a person who has had only accidental relations to the parsonage, or do you deal with him as tenant for life, as owner, in fact, of those buildings, and therefore to be treated with the same sort of general regard to his feelings, wishes, and knowledge that you would show to a private gentleman if you were altering his house?—I do not think that the cases are at all analogous. I often have the pleasure of acting for private gentlemen as their architect, and in reference to civil dilapidations. The question of civil dilapidations is no more a question of feeling than the question of ecclesiastical dilapidations; it is a question of the law upon the matter. I think it would be dangerous to give surveyors a discretion as to feeling.

2300. I do not mean that; but supposing that A. sold a house to B. on condition that A. put it in proper repair before B. purchased it, and that he called you in as a surveyor to report upon it, would you consider that a case on all-fours with the way in which you deal with a parsonage under this Act?—I must go by my instructions in either case.

2301. Taking your instructions as you read them, do you consider that that case is absolutely on all-fours with this?—It is not.

2302. May I ask you where you find a difference?—Because the instructions are pretty clearly and definitely laid down for ecclesiastical dilapidations as applying to all cases, but in civil cases nothing can be more various than they are as to the wishes of the parties concerned. In the one case their wishes may absolutely prevail, for there is no other than the private interest concerned; in the other case you cannot give the same effect to the wishes of the parties, because there is a public interest behind them.

2303. What is your opinion, as an expert, upon the policy of these instructions; do you think, putting aside the duty that you feel incumbent upon yourself to carry out these instructions, that they are in themselves wise and tolerant, or are they too arbitrary and restrictive?—That is a very large question.

2304. That is a question which comes directly before us to consider; we are here to legislate, and we can only legislate by collecting valuable opinions, and I ask for your opinion upon that point?—The question amounts to this: whether for 500 or 600 years the law of ecclesiastical dilapidations has been a good one or a bad one.

2305. I take the case as it is, and the instructions under the present Act?—The law of dilapidations has not, in any material respect, altered the instructions to surveyors.

2306. We have had evidence before us that, although the technical law may not have been apparently altered, the spirit in which it is read has been apparently altered, probably very much for the better?—The spirit has not been altered; but if you mean to ask whether I think that the present law has operated with severity upon present incumbents, I think it has.

2307. Will you kindly give us your reasons for forming that opinion?—Because under the old system it was very difficult to get any proper assessment of the repairs; it was never possible to get any specification of them, and no one really knew what the repairs were, and if you did get the amount allowed it was in almost every case insufficient. The incumbent was without instructions; there was no specification supplied then; and the probability is that he therefore applied the money, not to repairs at all, but to the pressing expenses of his coming in, and they are very heavy and pressing. He has his stamp duty to pay, and various serious expenses coming upon him, and the

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the first money that came to him, perhaps, was the dilapidation money, and it went in that direction. The consequence was that the works were not done, the dilapidations accumulated in one or two successions, and you then got to the point where a new incumbent found himself helpless, and his neighbours, perhaps, thought him exacting; but the accumulation of neglect had brought the case to a pass when it could not be allowed to go on any longer, and then you got some very seriously distressing cases. The new Act has, as it were, brought that matter to a head, and instead of an occasional incumbent being in that position every incumbent is in that position. That is pretty nearly what it amounts to.

2308. Then I gather that you think that, without going much further back, the present Act has, it may be inevitably, operated with great hardship upon the existing generation of incumbents?—It has drawn a tight rein.

2309. And therefore you think, from your great experience in the matter, that it is a case in which they have a fair and equitable claim to come before Parliament for relief?—I think that there is a claim for relief, and I think that some relief should be given. The relief provided by the Act of 1871 has not operated as widely as I think was intended.

2310. You stated that you had some information to give relative to the evidence that Mr. Astley gave regarding a house where you and he were brought into collision together, he as incumbent and you as surveyor; would you kindly make your statement?—Mr. Astley represented himself to you as a very helpless incumbent, as having the rein drawn very tightly by two surveyors, or I will not say very tightly by two, for he did me the honour to say that he thought that my report was, on the whole, equitable; but I have here his list of objections to it; and when Mr. Astley speaks of his not being able to obtain any redress, I must say he is not slow to seek it at any rate himself.

2311. Will you state briefly what is the nature of those objections?—He objects that I have not provided for any new lead to the roofs. My answer is that the lead is good throughout the roofs; that the only defect existing in them is that it was not laid in the best manner in the first instance; but that I have nothing to do with.

2312. But there is a further grievance, that the Canterbury surveyor was more exacting with regard to Brasted, so that the incumbent suffered on both sides. Have you any remark to make upon that?—I would rather keep to what I know of the house that I have seen; the other is only what I have been told. I do not think that Mr. Clark would tell me wrong, and he says that, in fact, the lead was ruined. But Mr. Astley having fully decided not to put his works at Brasted into private hands, of his own deliberate will caused Mr. Clark to be called in.

2313. In fact, from your knowledge of the house at Gillingham, and from what you hear as to the house at Brasted, your opinion is, that the lead was in a bad state at Brasted, and in a comparatively good state at Gillingham?—Yes. It is not new lead at Gillingham; I think that the lead has been there for 70 years.

2314. In short, Mr. Astley has been unfortunate; but you think that he had no unfairness to complain of as against either surveyor?—I do not want to judge Mr. Astley's case as to Brasted, about which I am not fully instructed, and I do not say that one or two of his objections in my own case are not valid; for instance, when he informs me that I have neglected to notice a chimney piece which is in tumble-down condition, I think distinctly that I ought to have noticed it; I do not know why it was overlooked, and I am quite prepared to amend my report on good grounds. But on the question of the lead I am not prepared to amend it, for I made it very carefully, and I may say that that report has gone through two incumbencies. That report was made originally when Mr. Fitzgerald came in; he made no objection about the lead, and he had executed about 90 *l.* worth of repairs when he went away.



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2315. Then we gather that Mr. Astley, who had nothing to pay for the lead, is the complainant, and that Mr. Fitzgerald, out of whose pocket the payment came, made no complaint?—Yes.

2316. Of course Mr. Fitzgerald made no complaint about the lead, if you made no order for payment upon him?—Mr. Fitzgerald was the new incumbent, and stood in Mr. Astley's position.

2317. How long before?—About two years.

2318. Then, practically speaking, the lead was in about the same condition when Mr. Fitzgerald came in as when Mr. Astley came in?—Just the same, except that Mr. Fitzgerald executed a few repairs on it.

2319. Then any complaint that Mr. Astley could equitably have made might, with equal equity, have been made by Mr. Fitzgerald two years before?—There were some slight repairs to be made in Mr. Fitzgerald's time, but I found those repairs made, and I found no necessity for any further work.

2320. Did you assess the dilapidations in Mr. Astley's time at the same amount as you assessed them at in Mr. Fitzgerald's time, or at more or at less?—I found that some matters had gone wrong in the interval, and I charged those as an addition against Mr. Fitzgerald.

2321. And some you found had been put right?—Some I found had been put right.

2322. And that left matters about where they where?—It leaves Mr. Fitzgerald entitled to about 90 *l.* of the money which is at Queen Anne's Bounty, and it leaves the new incumbent entitled to the rest, and an addition, I think, of under 20 *l.*

2323. In short, you conceive that Mr. Astley's complaints are not justified by the state of matters?—Some of them certainly are not, in my opinion; I say that the complaint about the lead, distinctly, is not justified.

2324. You are vice-chairman of the Society of Surveyors; would you kindly give us some information as to that society; when and under what circumstances it was founded, and what relation it bears to the working of the Act?—The society was founded in June 1872, after the Act had been nearly a year in operation.

2325. Were the surveyors invited by any external influence to form a society, or was it formed in consequence of a feeling that grew up among them?—I think that it grew up among them. It was first formally put forward by Mr. Bruton, of Oxford; but I had already myself moved the subject amongst the surveyors.

2326. In the meantime surveyors had been appointed all over England?—Exactly so.



2327. The

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2327. The object of your society then was to work the Act according to what you conceived to be its spirit, but upon some uniform principle?—Exactly so; I have the rules of the society before me.

2328. We have had it in evidence that all the surveyors in England, except a few, have joined that society?—That is so.

2329. Has there been any pressure (a right pressure, no doubt,) put upon the surveyors of England by the rural deans or the bishops to join the society, or has it been purely voluntary?—I am not aware of any such pressure having been used; I think that it is wholly amongst the surveyors themselves that it has been done.

2330. The association is now practically accepted as the representative of the surveyors, as it takes in nearly all the surveyors?—We have always sought to prevent ourselves being looked upon as a public body, but rather as a body for the instruction and guidance of the surveyors themselves, that we might learn from one another's experience.

2331. Supposing that a bishop or an incumbent is aggrieved by any case, do you conceive that you are a court of honour to entertain the case; supposing that there was a grievance in the case of a survey in Westmoreland, could the incumbent in Westmoreland, or the Bishop of Carlisle, bring a case before you, and would you entertain it equitably?—That is our principal business; answering questions from various parts of England.

2332. Have you had any of what I may call trials of surveyors?—I have understood that some of these questions have been put at the suggestion of authorities in the diocese.

2333. But, as vice chairman, have they ever come before you?—We have always thought that we should be doing wrong in attempting to set ourselves up as any sort of court; we have been only advisers to the surveyors themselves.

2334. You do not offer yourselves to the various parties, bishops, clergy, and surveyors, as a voluntary court of arbitration when they fall out together?—We have not done so. We have taken care to communicate our existence to Mr. Aston at the Bounty Office; and, indeed, our first meeting was held at the Bounty Office by his permission.

2335. Do you rather abstain from doing so, or is it accidental, that you have never acted in that capacity?—We have not put ourselves forward for that purpose. In the first instance, we certainly should not have considered ourselves at all qualified for it.

2336. Do you consider that in the limited sphere of operations which you have taken up you do as much good as if you put yourself in the position which, for instance, the Institute of Architects occupies towards the architectural profession?—I think that we do better than that; but I doubt very much whether the clergy would be willing to accept such a body as a court. I think that it answers better that questions should come individually as they may arise, at any rate for some time to come. I think that the Act works well in most respects, and gives a very general amount of satisfaction, and that it would be a pity for the surveyors to attempt to set themselves up in a position which the law does not give them.

2337. Putting quite a hypothetical case; supposing that the Committee (it is not likely to do so) were to submit a series of queries to you upon the working of the Act, do you think that your society would meet together as a society to answer those queries?—I am sure they would.

2338. But supposing that an aggrieved incumbent were to bring his complaint against a surveyor before you, you would not sit in judgment upon that surveyor?—Aggrieved incumbents have asked us what we thought of a particular course.

2339. And you have met and answered that?—We have answered the question.

2340. And how has the surveyor, whose conduct you have criticised, taken that?—I think that the surveyor has taken it in the best possible spirit. We have had some debates on matter in which we think that a surveyor has "gone wrong"; I do not say that he always quite fully admits it, but I think that it influences his conduct.

2341. That is what I meant when I talked of a court of honour; you have to that extent held inquiries upon questions which have arisen?—Notably we have had the Axbridge case before us.

2342. May I ask what was your conclusion upon the Axbridge case?—I think that everybody felt that Mr. Hippisley was wrong in reference to the Axbridge case.

2343. But Mr. Hippisley came before us the other day to state that he was perfectly right?—I do not think that he quite said that; he showed that some people thought that he did right, but I do not think it likely that he would ever do it again.

2344. I think not; because I do not think that he would find a similar reredos?—Mr. Hippisley said to me in this room: "I know you are all against me"; so that at any rate he knew our view perfectly well.

2345. Then, in short, I gather that your association is only one for your own private guidance; but, at the same time, that you would entertain any inquiry that a clergyman or a surveyor would send to you, although you protest against being considered in any way a public or an authoritative body?—Of course we are not so. I recollect that we have had a question sent to us by the chancellor of a diocese (I do not remember at this moment what diocese it was), and we were told that the bishop had advised some one to send a question to us. Matters from that sort of authority have come before us.

2346. Do you think that it would tend to the good working of the Act if the communications between the surveyors, represented by your society, and the Church, represented respectively by bishops and clergymen and officials, were made more frequent, and more intimate?—My own individual opinion is, that it is not desirable for the good working of the Act for the surveyors to be made more important than they are, because some of the clergy already attach an importance to them which they do not possess, and I think that a very few years will work that off, and anything of the kind will be better dealt with then than now.

2347. Do you not think that it would be more quickly worked off if the number of surveyors were increased, and that at present they have a fictitious importance from there being so few of them in each diocese?—I do not think that the work

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work would be done any faster. In Salisbury, where they appointed an additional surveyor about eight months ago, and in Norwich, and in one or two other dioceses (not many) three are appointed for the whole diocese, and any division of work made amongst them is made privately, under the authority of the bishop. In the diocese of Salisbury, although a third surveyor has been appointed, the only case that ever was referred to him he declined to proceed with; he was too busy; and the consequence is that he has never had another referred to him.

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2348. Did I rightly understand you to say that a majority of the clergy were, in your opinion, satisfied with the working of this Act?—Yes.

2349. Do you make that statement by their authority, or only from your own idea?—I make it upon the authority of having heard it said to me by a great many of the clergy themselves.

2350. Have they said that they preferred the present Act to the old system?—That they very much preferred it.

2351. Or to any improvements that have been suggested?—I do not say that I ever heard improvements declared against; I think that most people feel that improvements are possible.

2352. Then you think that the number of clergymen who have come here, or who have volunteered evidence against the Act, are only a small minority, and do not represent the general feeling of the clergy?—I should say that they by no means represent it.

2353. You have a great business besides this particular business of ecclesiastical dilapidations, of course?—I have a business besides.

2354. That takes up a good deal of time, does it not?—Of course it does.

2355. Have you always been able to attend at once to these cases when they have come before you?—I have never had any complaint of delay. Delays occur from various causes; but I am not aware that they have occurred from any cause over which I have had control.

2356. With reference to other dioceses, have you heard that there have been considerable complaints of delays?—I think that it was very bad in York under the surveyor who was superseded.

2357. Taking a case nearer home, in Kent, where there is one surveyor for the whole of the diocese, have you heard complaints?—That is a recent appointment; there were two surveyors until about a year ago. In the county of Kent there are two surveyors now.

2358. Has not Mr. Clark been recently appointed to do what two men did before?—Yes. I have part of Kent myself, but Mr. Clark has the rest, and he has now what Mr. Spooner had before.

2359. Mr. Clark, in fact, now transacts the business which two men had to transact before, does he not?—He does.

2360. You do not know of your own knowledge whether there have been complaints with regard to his district?—I have not heard of any.

2361. You stated just now that the instructions regarding ecclesiastical dilapidations are clearly laid down in almost all cases; can you refer me to any place where they are clearly laid down?—I spoke of the authorities from which I had borrowed them.

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2362. You spoke of Wise *v.* Metcalfe; will you allow me to ask you whether this is a correct definition of your idea of your duty of surveying a parsonage house: "In Wise *v.* Metcalfe it was held, that the incumbent of a living is bound to keep the parsonage house and chancel in good and substantial repair, restoring and rebuilding, when necessary, according to the original form, without addition or modern improvenent." Does that convey the general principle upon which you act?—It does; but that case conveys it very much more in detail than that. The estimates submitted in that case are very instructive as to the detail which the surveyor is to include.

2363. You are aware that, under the ordinary law, a general covenant to repair must be construed to have reference to the condition of the premises at the time when the covenant begins to operate?—In civil matters one always has a lease to guide one, and you are guided by the covenants of that lease.

2364. Do you take into account the condition in which the parsonage house was at the time that the outgoing incumbent received it?—No.

2365. Then thereby you at once create a great difference between him and the layman, under the operation of an ordinary lease do you not?—He then is placed in the circumstances of a layman who has not done the repairs which he was bound to do, and the succeeding tenant has taken them upon himself. The incumbent received dilapidation money, or he did not receive it (for it makes no difference) when he came in; but with the money he undertook to make the repairs, or without the money he undertook to make the repairs.

2366. Where do you find that?—You will find it in Wise *v.* Metcalfe.

2367. Supposing that a man comes into a parsonage house, and he finds it not dilapidated, but in a state requiring constant attention, do you not take into account, when you value his outgoing, the state in which he found that house?—I have no knowledge or information as to it at that time; it cannot be done.

2368. You treat it just as if the house had been new, or in thoroughly good and substantial repair, when he took it?—Not exactly that. I look carefully through the house for defects; and it is no question in my mind how those defects arose, but they must be made good. That is the case of Wise *v.* Metcalfe.

2369. Is it not, in your opinion, an enormous hardship upon a clergyman who comes into a house fit to live in, but not in first-rate repair, and who is prepared to yield it up to the next incumbent in as good a condition as it was when he found it, that he may be required to do a great deal more than that?—But is he prepared to do that?

2370. Is not your principle that you require an incumbent to give up his house, in all probability in a much better state than he found it in, without reference to whether he had received his dilapidation money or not?—No, he is bound to give up his premises in good repair.

2371. In tenantable repair?—No; tenantable repair is an expression that is very difficult to apply; there are so many rules as to tenantable repair.

2372. Should you think a surveyor was wrong who took the view that I have just put to you; that is to say, who inquired as to the state that

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the incumbent had received his house in, who found that it was in as good a state as it was when he went in, owing to the care with which he had kept it, and who only required that he should hand it over in as good a state as he found it in?—No surveyor could ascertain that point. In the case which I mentioned just now, which went on for six years ending in litigation, the surveyors on both sides, myself and Mr. Smith of Hastings, were asked to say what in our opinion was the amount of dilapidations when the incumbent came in, and we both declined to give any estimate.

2373. Would there be any difficulty in getting evidence as to that; you could have inquired, in the first place, whether there was any dilapidation money paid at the time, could you not?—Of course the outgoing incumbent alleged that it was actually good. There are two sides to the question.

2374. Do I gather from you that it is the principle of your society of surveyors that you do not consider what state a man received his house in, but that you say that he must put it in good repair, even though that may be very much better than its state when he received it?—Quite so.

2375. You do not find any principle of that kind laid down in the Act for your guidance, do you?—No, that is the old law of the case; the Act did not alter that.

2376. Supposing that it was shown to you that you were dealing with a house, which had been an old and inconvenient house, the living being small, and that the incumbent had executed certain repairs, and that it was in as good a condition as when he came into it; is there anything to prevent your putting a very small amount of dilapidations upon it?—I do not quite follow the question.

2377. What is there in this Act, or in any Act or law, that binds you to make a man hand over to his successor a house in a much better state of repair than it was in when he received it?—There is the law of dilapidations. The law of the case is that the first charge on the incumbency is the maintenance of its buildings, and the second charge is the maintenance of the incumbent; and if the buildings are not maintained the incumbency is injured thereby. You cannot ask the incumbent to put better buildings, but the law presumes that he took care of himself when he came in, and if he did not have his repairs done then it would be his own default, and it would not be right to charge that against his successor.

2378. As I understand, you do not take into account anything except the condition of the house when you survey it?—No, we do not; and the Act, I may say, points out that we shall not.

2379. I saw in the evidence one day when I was not able to attend, a statement that the order of a surveyor had been given for the erection of a cottage, the foundations of which were only seen, and which has not existed in the memory of man; would not that have been covered by the 70th Section of the Act, which says that "no incumbent holding a benefice at the time of the commencement of this Act shall be liable for dilapidations in respect of any buildings which shall have been pulled down by a preceding incumbent, unless the incumbent so holding such benefice shall have received, or shall be entitled to recover at law, or in equity, from the last preceding incumbent?"—That section is not very distinct in its framing; the difficulty is as to the last words, "shall have received, or shall be entitled to recover at law, or in equity." That goes beyond a surveyor's question; the question is whether he is entitled to recover or not.

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2380. If the foundations of a cottage had been pointed out to you, should you think yourself justified in making an order for its restoration?—Perhaps I had better take a case which I have actually dealt with, as I am not aware of the circumstances under the case to which you refer. I found the traces of a building upon a piece of land which had been let on lease; the lease was executed by the late incumbent, and had run out in his time; the building stood long after the lease had expired and gradually fell into dilapidation (it was a wooden building throughout), until about two years before the time of my survey it almost entirely disappeared, and, when I went to value it, the only marks of it were about six posts let into the ground, and only the feet of them were visible. I inquired into the origin of this building, and the erection of it, and the solicitor of the late incumbent afforded me every possible information, and the matter was very fairly dealt with on all sides; I have no complaint to make of anyone. I had to go very fully into an investigation as to the existence and nature of this building, and the question whether it was a trade building, and whether some part of it had not been treated as a trade building. I came to the conclusion that it was my duty to report for the re-construction of the building, except all trade parts of it. For instance, there had been a building erected merely to cover a crane, and, therefore, I would not take in that building; but the conclusion which I formed was that it was my duty to throw upon the late incumbent or his executors the onus of showing that they were not chargeable; because he had made the lease; it was the lease that created the difficulty, and it had run out in his time. The amount was a serious one; it was 575*l.*; and I told the solicitors to the late incumbent that I meant to report, so as to throw the onus upon them. They appealed, and the matter was very fully entered into. The new incumbent felt rather strongly that he ought to have the building, and his solicitor took that view also; but, as I have already stated, there was a good deal of conflict of evidence, all of which I had gone over before, and ultimately the bishop's secretary said that it was of no use to go to appeal until they could agree as to a statement of the case. Accordingly the two solicitors stated a case between them, and it was referred to Sir Travers Twiss; and Sir Travers Twiss decided that the new incumbent had no claim in respect to that building.

2381. You have had no appeal, I think, against any of your orders?—Not in London. I have in Rochester; that one was in Rochester.

2382. Appeal is one thing, and complaint is another; have you had a little grumbling now and then?—I do not say that I have not had a grumbling clergyman occasionally, but it is the exception.

2383. Have you had clergymen complain to you sometimes that the appeal was of very little use, and that they thought it better to submit in consequence of that?—Beyond my own diocese, clergymen,

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clergymen, and lawyers, and surveyors have come to me, and paid me a fee, and consulted me upon various reports from surveyors, and asked me my opinion of them; and, except in one rather strong case, in which I advised an appeal, I have, in every case, advised that the report was best let alone. The son of a late clergyman at Exeter came to me, and consulted me as to a report; I told him that it was good on the face of it, and from his description of the buildings themselves, I thought it was not a bad report. He told me that the official surveyor had undertaken to meet him, and point out the actual defects in the house itself; and I said, "I do not think a fairer course could be adopted; therefore, unless you see further occasion to consult me, I think that you had better go on with it yourself." He paid me a guinea, and I never heard any more of it.

2384. That advice, I suppose, was in some degree given by you on account of the expense and trouble of appeal?—The advice was given because there was no ground for appeal, but, as I have already stated, I always advised against litigation. Under the old system it was still more expensive.

2385. Supposing that there were a still less expensive system of appeal than there is now, you would perhaps not be so entirely against it?—No, certainly not. I have no objection to reduce the expense of appeal.

2386. Do you know, as a fact, that there has been a Committee appointed by Convocation to remodel this Act, in consequence of the strong expressions of disapprobation of it on the part of the clergy?—I know a great deal about that Committee, and I should speak differently of its purposes and its work, because I have been referred to by a gentleman on the Committee for information; I have seen the report in draft which is now being presented to Convocation.

2387. Taking the whole question, do you, a man of eminence in your profession, and able to give an opinion upon the subject, see any great practical objection to providing for all these dilapidations by a fixed annual payment upon the livings, and a periodical survey, so as to remove from the incumbent and from other parties all the disagreeables of the present system?—That is not quite a surveyor's question, it goes beyond that; but I have thought of it because I have heard various suggestions in that direction. It seems to me that it would be attended with very great difficulty. In the first place, I am averse from annual charges upon the benefices; I think the less they are charged the better, although I am going presently to suggest an annual charge. But I think that, notwithstanding the good that the Bounty Office has done by means of their loans, it is not an unmixed good; one finds a good many livings unduly charged by means of these loans, and I do not want to add further charges. Then one difficulty arises directly. How are you going to make annual charges for repairs operate specifically on each benefice? Will you not be making one benefice chargeable for another, which I think would be felt as very disagreeable. When the unrevised fees were started, for instance, in the two dioceses in which my duty lies, it was one uniform charge in every instance, whatever the amount of the work or the amount of the dilapidations was, and that was felt to be a very disagreeable charge. The revised fees which



Mr. *Knatchbull-Hugessen*—continued.



apply specially to each case are much more acceptable. It was very disagreeable to the surveyor, because he had to go to a clergyman and either give up part of his fee, or else make what seemed an exacting demand; he lost in the small cases, and he had no power to recoup himself in the large ones. The incumbents in the case of an annual charge would be almost in that position; they would be paying for the small benefices, unless it were adjusted to the actual wants of the benefice, which possibly may be done; but I think that it wants that qualification.

*Chairman.*

2388. Supposing that there were an individual account for each case, the same as there is now on the dilapidation account, and that the incumbent either had the dilapidations paid out of that sum, or if there were no dilapidations, at his death, or on vacation the amount were returned at the time, what objection would there be?—It is not impossible, but it is a matter of rather difficult detail, and that should be provided for.

2389. Is not that the very principle of the Act which you are talking about?—But there is no annual charge.

2390. But is not that the principle upon which this Act is based; that each living has an individual account with Queen Anne's Bounty?—That is easy when you are dealing with only one payment.

2391. Is not that the principle upon which this Act is based?—If you could frame a scheme which should make each living contribute, and keep its own account, it might be done.

2392. Is not that the principle upon which this Act is worked?—The annual payment is wholly wanting from it.

2393. Has not each living a separate account?—It has.

2394. Then if what the Right Honourable Member was asking you about were done now, that is to say, if an annual payment was made by each living, it would not make the large ones pay for the small ones, would it?—I say that subject to the details being well arranged, it might work.

Mr. *Freshfield.*

2395. I think I understand you to say that your view of the principle of dilapidations would involve the necessity of ordering in certain cases the actual re-building of the buildings?—Under the old law or under the revised law, except in reference to some outbuildings; I have never known a case of re-building a house, except in one case the wing of a house.

2396. Have you ever found it necessary to require the rebuilding of a glebe house?—Never.

2397. And yet I understand you clearly to say that that would be within your duty under given circumstances?—It might occur.

2398. Do you not think it would be an extreme hardship upon an incumbent, who had, perhaps, just come in to a very small living, to require him to rebuild a house which might cost 600 *l.* or 1,000 *l.*—If the new incumbent gets the money, then I do not see any hardship in it.

2399. Taking the case of a complaint made, and a survey under it, on which you found that the condition of the house was such that it was

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necessary to rebuild it, and that it could not be kept standing; in that case, would you be required to order that it should be rebuilt?—A case might occur in which that would happen.

2400. A case would occur, at all events, in point of liability, under your view of the principle of dilapidations?—I think that under this Act it can hardly occur, and will tell you why. This Act provides most wisely that the surveyor shall put down the facts in black and white; it almost gets rid of the possibility of such a sweeping measure as the one which you suggest. I have myself reported upon a house where I felt that there was nothing to be done but to rebuild it; but the Act requiring me to point out the details specifically, would not allow me to go to that length.

2401. You have referred, as your instruction, to the case of Wise *v.* Metcalfe, which expressly includes the liability to rebuild?—That is so; but this Act says that you must state the repairs in specific detail. That compels you to go over the house, and point out every one of the defects, and so you arrive at a description of repairs, which is not rebuilding.

2402. Then you think that because you are required to specify defects which collectively amount to a necessity to rebuild, you have not the power to order rebuilding, though you think it within the principle of the case?—The specification necessarily omits some matters which are only advisable.

2403. I cannot understand why, if you formed your judgment upon the result of all the examination into the details that it was necessary to rebuild the house, you should not conscientiously decide that that was so, and order it to be done?—If I came to the conclusion that it was necessary I should put every one of the items of the rebuilding into the specification; but the difficulty is to say that it is necessary, because the worst house will have something worth preserving.

2404. Then it comes round to this: that in some form or another you would be bound to require re-building, either through the process of executing a vast amount of repairs which, as you say, would amount to rebuilding, or in some other way?—Yes. As to a house, I have never met with such a case, but as to outbuildings, I have.

2405. As to a glebe house, I understand that you have not had such a case, but that you might have such a case?—I have never met with such a case upon a glebe house, but it might occur.

2406. Would not that be a great hardship upon an incumbent as to whom complaint was made, who might have come in within the last few years, and who might have been deluded by the amount that was required from his predecessor?—I think that hard cases may and do arise.

2407. If it were possible to substitute for the incumbent, as the person to execute the repairs, some public board which would undertake the duty in all cases of executing what was necessary in the way of repair, do you not think that that would be a great improvement upon the existing law, and especially upon this Act of Parliament?—One wants to know something of the detail of such a measure.

2408. I think you said that you were not present when the Bishop of Peterborough was examined?—I was not.

2409. He suggested that the whole of these arrangements should be placed in the hands of Queen Anne's Bounty Board; that Queen Anne's Bounty should be referred to on every occasion where a survey was required; that Queen Anne's Bounty Board should find the money to execute the repairs, or, if necessary, the rebuilding; that it should do so out of its own funds, and that it should recoup itself in some manner or another by an annual charge upon the living. Do you not think that that would be an arrangement attended with great advantage, and that it would be a great improvement upon the present system?—I think that if the details of it could be satisfactorily arranged it would be an advantage.

Mr. *Freshfield*—continued.

Mr. *Monk.*

2410. Have you met with any practical difficulties in carrying out your duties under the Act; for instance, as to getting into the premises?—I cannot say that I have.

2411. Have you ever been refused admittance into a glebe house?—In one of those cases of complaint the incumbent walked inside his hedge in a defiant manner, and he indicated to me that if I came alone he would let me in, but that if I had anyone with me he would not; but he proved a most friendly and well-conducted man afterwards; so that, practically, I had no complaint.

2412. Do you consider that you have sufficient power under the Act to enable you to gain admittance in case of a refusal?—No; I think that there is a deficiency in that respect. If this gentleman had chosen to say that I should not come in, I could not have entered.

2413. Could you not have applied for an order by a magistrate?—I think that there is no power in the Act to enable a magistrate to make such an order.

Mr. *Walter.*

2414. In the particular case of the shed or outbuilding to which you referred, which had been allowed to tumble down after a lease, had that been built by the then incumbent, or by his predecessor?—By the outgoing incumbent.

2415. Is it the law at present that whatever building an incumbent puts up during his incumbency, he has no right to pull it down?—It is so if it is a building affixed to the freehold.

2416. Supposing the case of what is commonly known by the name of "a folly," that is to say, a tower for the purpose of getting an outlook, the incumbent wanting to get a view and building a structure of that kind, if he afterwards pulls it down, would his representatives be liable for dilapidations?—I think not, because Lord Campbell laid it down that incumbents were not liable for articles of mere ornament and luxury. That, I think, is clearly understood. In the same way summer-houses are never included. I know an incumbent who is at the present moment building an observatory on his glebe, but I have no idea that he will be liable for the maintenance of it.

2417. Have any cases occurred within your experience of outgoing incumbents being unable to pay dilapidations from want of means?—There has been one in the diocese of London, and I am sure that such cases do occur.

2418. That being so, do you not think that an incumbent ought to give some security in some form or other for the means to meet dilapidations for which he will be liable at his death or avoidance of the benefice?—I have a case in my mind at the moment which has recently occurred.

The

Mr. *Walter*—continued.

The incumbent dies, leaving very considerable dilapidations, and I understand that there is no estate; he tried to do something within the last four years of his life towards taking the benefit of this Act, but it was a case which this Act would not help him through; his case was peculiar, and he was in very difficult circumstances. His estate will pay nothing, I am told. I have surveyed and reported upon the dilapidations, and so they remain at the present moment as a charge which there is no means at all to realise.

2419. Do you not consider that the law is so far defective, inasmuch as it provides no means for dealing with such cases?—I think that it is; it would of course be a great relief to the new incumbent if there were some such means.

2420. How do you deal with cases of dry rot?—The rotten wood must be removed.

2421. In some cases would not that involve the pulling down and rebuilding of the house?—It might.

2422. Have you ever had a case of that kind?—The most extreme case which I have had, but which did not come to the pulling down of the whole house, was a case of rotten timber built into the walls; and although I might suspect that the rot had gone further than I could see it, if I did not see it, I did not hold myself at liberty to report upon it, although I made the utmost examination that was possible.

*Chairman.*

2423. You spoke of your endeavouring to get uniformity amongst the surveyors; do you happen to know Mr. Armfield, the surveyor of York?—Not personally.

2424. Is he a member of your body?—He is a member. I think he lives at Whitby.

2425. Do you know Mr. Barker, the surveyor of Winchester?—Very well indeed.

2426. Supposing that I stated to you that one gentleman who moved from Winchester to York had all the fences, and gates, and hedges, and things on his glebe valued in the Winchester diocese, for which he paid a large sum, and that when he got to York he found that the surveyor there did not take any notice at all of them, and said that it was not the practice to value such dilapidations, and the dilapidations only came to 10 *s.* on his chancel; should you say that that was a right course?—I can tell you what are the real facts upon which that arose: they have very large glebes in the diocese of York. The rural deans, in order to relieve the clergy from the repair of glebe fences, held that the surveyors need not take glebe fences into account, and gave them no fee for doing so, and consequently for a considerable time the surveyors of York took no notice of the fences, under the instructions of the rural deans.

2427. Then they were guided as to the law of dilapidations on that point by the question whether they got fees for it or not?—They were guided as to their law by the instructions of the rural deans.

2428. You stated that the surveyors were guided in valuing in these cases by the law of dilapidations, and that the law which existed before this Act, is a binding rule with them now; you say that, in York, because there were no fees allowed for a particular class of dilapidations, they did not enter into them?—I say that the question came before the Society, and the



*Chairman*—continued.

Society said that it was wrong, under any circumstances, to omit those fences, and the reply that we got was that it was done at the desire of the rural deans.

2429. Then, as regards the fences in Yorkshire, the surveyors took the law from the rural deans?—Yes.

2430. Is there any clause in the Act permitting that?—It was illegal, I should say, altogether.

2431. Have you heard of a case where, in the same diocese of York, they have valued 237 *l.* for fences, under a new surveyor who has been appointed?—Yes, we have heard that the rule has been altered, and that they do value for repair of fences now, since the appointment of the two new surveyors.

2432. In the case of a gentleman named Addison taking a living in the diocese of York, the surveyor declined to state any amount for dilapidations on fences or gates connected with glebe lands, it not being the custom of the diocese, after the rule had been altered; a gentleman by the name of Whichton states that he had to pay 237 *l.* for such dilapidations; that you think may possibly have occurred?—It might have occurred. The fact that the valuation for repairs in the diocese of York was habitually and illegally omitted was brought to our notice by the surveyor for Ripon, who found the clergy in his diocese complain that they were charged for fences in his diocese, and the clergy in York not so charged.

2433. You stated to the honourable Member for Berkshire that there was no obligation to repair things for ornament; but in cases of pigstyes, where they have been close to a dwelling, and have been taken down for a great many years, have you ordered them to be restored in the same place?—Yes, I have, where they have tumbled down.

2434. Where you have found traces of the foundation of an old pigstye you have ordered it to be restored?—Yes; the case which I have in my mind at this moment is the case of a house which the clergyman had not inhabited for 16 years, and there were a good many tumble-down places about it, and amongst others there was a pigstye.

2435. Where was that?—It was at Greenford, in Middlesex; I reported for a new roof to the pigstye; the walls were standing.

2436. Was it put up?—No, the new incumbent applied to pull down the old house altogether and re-arrange the offices.

2437. What was the amount that you assessed for dilapidations there?—It was about 650 *l.*

2438. Were you acting as the architect for the new incumbent?—No.

2439. Who was acting for him?—Mr. White, the well-known architect.

2440. Does he pay Mr. White the 5 per cent. in addition to your 3 per cent.?—I presume so.

2441. As a matter of practice in the profession, he would not accept less than the 5 per cent.?—No.

2442. Does he charge independently of your plans?—I cannot tell you how much he gets. The incumbent submitted his new plans to me with a view of knowing how much of the dilapidation money would be applicable to those new works, and I certified that a certain amount of it would be applicable, because some farm buildings and the glebe lands were not affected by his plans at all.



2443. Did

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*Chairman*—continued.

2443. Did he borrow the money from Queen Anne's Bounty?—I believe he did.

2444. Were your expenses included in that?—I do not know; I have no means of knowing how that has been arranged.

2445. But you know that under the Act, Queen Anne's Bounty Board have the right to include part of the expenses in the loan?—I know that they can do so, but I have no means of knowing whether they have done so or not.

2446. In how many cases has it occurred that your fees have been settled by them?—I can only remember one case at the present moment; there may have been two. Notwithstanding that I do not know it, in this case it may have been so, because the work is not concluded, and the incumbent has not settled accounts with Queen Anne's Bounty Office; so that it may or may not be so.

2447. At all events your fees have been settled by one or the other?—I think they have. I can tell you if they have been paid on the report.

2448. Have you made a final report?—I made a report on the dilapidations, and the bishop issued his order on the report.

2449. That money has been paid in, I suppose?—Yes, it was paid in immediately by the late incumbent.

2450. I thought the new incumbent paid you?—The money was paid in immediately by the late incumbent.

2451. But the new incumbent pays you your charges, does he not?—He is the person to whom I should look for them.

*Chairman*—continued.

2452. Did Mr. Middleton say that he should appeal?—No, he did not.

2453. He did not in fact appear, but he paid the money in?—He made no appeal at all; he wrote to me expressing himself satisfied on the whole with the result, but he mentioned to me his objection to the pigstye, and it was the only objection he named.

2454. Have you anything more that you wish to mention to the Committee?—If the Committee would allow me, I should like to communicate some papers as to the operations of the Surveyors' Association, showing what they have done. The surveyors really have nothing of their work to conceal; they are quite willing that it should be open to the public. I have drawn up a paper of amendments to the Act which I should suggest.

Mr. *Wait.*

2455. Has your attention been called to the payment of diocesan surveyors by salary, to be levied by means of a rate or insurance on the incumbents?—I have heard it suggested.

2456. Have you formed any opinion as to the desirability of such a system?—Of course surveyors have no objection at all to being paid by salary. From their point of view I see no objection to it.

Mr. *Freshfield.*

2457. Are you prepared to hand in a statement of your ideas of the amendments that are possible in the Act of Parliament?—I will prepare such a paper.

Mr. Arthur Rowland Barker, called in; and Examined.

Mr. *A. R. Barker.*

*Chairman.*

2458. You are the sole Surveyor appointed for the diocese of Winchester, are you not?—I am.

2459. Where do you reside?—At No. 11, Buckingham-street, Strand.

2460. Have you been the sole surveyor since the Act has been in operation?—I have been the sole surveyor for Winchester since the Act came into force.

2461. How many cases have you had of the different classes since that time?—Since the Dilapidations Act came into force, I have surveyed 200 cases; I have orders for more, but 200 surveys have been made by me.

2462. Can you state to the Committee whether they have been on vacancies or on complaint?—Yes; I may state that 160 have been completed; and out of the original number, 45 are those which are under Section 12, that is to say, voluntary surveys; and 155 have been on vacancy.

2463. Were there not any on complaint?—One on complaint.

2464. How recently have you had to survey a voluntary case?—About eight weeks ago.

2465. When was the order made?—I cannot give you the date of the order; but I think the survey was made within a week after the bishop's order.

2466. I believe you heard me allude just now to a case that occurred in your diocese with regard to the valuation of fences on glebe lands?—I did.

2467. Do you seek for the traces of old fences

*Chairman*—continued.

with a view of having them reinstated?—If I have reason to suppose that there has been a fence round a glebe I search for traces of such fence; but if there is no fence existing, and I think that there ought to be a fence, I make as much inquiry as I can of the people who are concerned, or who have been concerned, for the living in former years; and if from their evidence I consider it is proved that there has been a fence, I claim for the fence, whether one, or two, or any number of incumbents has intervened.

2468. But supposing that the owner of the glebe for the time being had thought that for the convenience of agricultural arrangements two fields should be thrown into one, would you charge him for a fence?—I think there are circumstances under which you need not order the renewal of the fence.

2469. Do you think that that is left entirely to the discretion of the surveyor?—I do not think it is. In these days land is being farmed in very much larger holdings, and I think that the consideration of the surveyor ought to be directed to that mode of agriculture.

2470. You say that if you found traces of a fence, or could get evidence that there had been one, you would order it to be restored?—It depends entirely upon what position that fence held. If it was an outside fence to the glebe, I should hold that the incumbent was bound to restore it; but if it divided one glebe field from another, and there were circumstances brought to my notice which would lead me to consider that it would

*Chairman*—continued.

would be better for the glebe that it should not be put up again, I should not order it to be put up again; but I should make a memorandum of it in my report to that effect.

2471. Should you fix any sum of money for it?—I should not.

2472. Do you think that you would have the sole discretion vested in you to say whether the man should pay for the fence or not?—I think that it would be rather strong language to say that I had the sole discretion.

2473. Do you act upon that principle?—Not in all cases.

2474. Do you act upon your own discretion in all cases in determining whether a fence should be put up or not?—No; I take the evidence of those who have had more to do with the glebe than I have, and I act on their views in connection with my own; I think that the surveyor requires to use considerable discretion in valuing dilapidations.

2475. And you take it?—I do.

2476. Does that apply to the state of buildings as well as to fences?—Yes, certainly.

2477. Supposing, as was put by the Right honourable Member just now, that evidence came before you that a house was in a bad state of repair, but still in a tenantable state when the incumbent came into it, would you take that into consideration in making the valuation?—I should consider that I had nothing to do with any state that the house was found in by the incumbent who was going out of the living.

2478. Then what would guide you as to the repairs necessary to the house?—The substantiality of the building.

2479. That is to say you would make a report for such repairs as would make it substantial?—Yes.

Mr. *Beresford Hope.*

2480. Substantial according to its materials?—Yes, specially so.

*Chairman.*

2481. Without reference to time?—Without reference to time.

Mr. *Beresford Hope.*

2482. If it were a post and pan house, you would make it good as a post and pan house?—Certainly; you cannot claim for improved construction.

*Chairman.*

2483. Have there been any appeals against your reports?—One appeal.

2484. Who was the other surveyor called in?—The surveyor for London, the last witness.

2485. Did he alter your report?—He did.

2486. In what way?—He gave it as a less sum than I claimed. I claimed so much for the fences. It was a case where there was glebe only.

2487. Why do you call it "claimed"?—I claimed of the late incumbent so much money to be paid to the new incumbent to restore fences round the glebe.

2488. But for whom were you claiming?—I was claiming for the new incumbent.

2489. But he does not get the money, does he?—Yes, he does.

2490. Queen Anne's Bounty gets it, does it not?—Queen Anne's Bounty gets it through him, but it is the new incumbent that has to claim the money.

2491. Do you think that you are acting for the new incumbent, as against the old incumbent?—Certainly not.

2492. Then why did you not consider the old incumbent?—I did consider the old incumbent in assessing the amount of repairs that was required on the fences.

2493. You act as between the two?—Quite so. I am an arbitrator, in fact, between the two.

2494. Have you known any instances where the amount assessed has been insufficient or more than sufficient to meet the detailed works?—There are instances in which the amounts have been exceeded.

2495. What happens then?—The incumbent pays it; but I may say that they have not been of any serious amount.

2496. As a general rule, you have been able to keep your estimates right?—Yes, as a general rule; I have had but few complaints against the work not being able to be done for the money.

2497. Have you had any complaint or difficulty with regard to a new incumbent executing the works where the money has been in Queen Anne's Bounty?—I have had such complaints, but the complaints have generally arisen from the incumbent not carrying out the provisions of the Act. The Act provides that the incumbent shall draw certain money, at stated times, from Queen Anne's Bounty if I give a certificate; but the incumbent objects to pay for a certificate, and therefore he goes without his money, and has to find it himself. In the meanwhile the work is done without the surveyor having any oversight over it; I conceive that the Act was framed with the intention that the surveyor was, to a certain extent, to superintend the work by periodical visits.

2498. If the surveyor is to superintend the work, how would he be remunerated?—He gets a fee for each visit, in the majority of instances.

2499. What is the fee in your diocese for each visit?—I get two guineas for each visit of inspection after the first survey.

2500. Do you also get travelling expenses?—Travelling expenses are allowed in the diocese of Winchester.

2501. Are the Channel Islands within the scope of your duties?—No; the Act has no effect in the Channel Islands.

2502. What is the farthest point in the diocese of Winchester?—I should think that the Isle of Wight is the outside of my district.

2503. Supposing the case of a man wishing to get his money shortly with three or four certificates, you would have to go each time at his expense, would you not?—I should have to go to the Isle of Wight; but I think that that requires a little explanation. You asked that question, I presume, with a view of ascertaining the expense. I may state that I do not charge expenses from London to each case, but that I club all my surveys together, and charge to each survey a proportion of the actual expenses incurred. Supposing that I go out of London, and that I make eight surveys, and that it costs me 3 *l.* to make those eight surveys, I divide that 3 *l.* into eight parts and charge them proportionately to each case.

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Mr. *Beresford Hope.*

2504. Then the man at Camberwell helps you on to the Isle of Wight, I suppose?—No, certainly not; the man at Camberwell pays probably the cab hire or the railway fare to Camberwell, a case in London district would not be taken with others, but separately.

2505. Then the man in the Isle of Wight pays the difference between the last place that you are at and his place?—No, I arrange my expenses by mileage. If I have to take a fly, extra to the travelling expenses by rail, I charge that case with the fly.

2506. Supposing that you are going to three places, 10 miles, 100 miles, and 120 milesrespectively from London, how do you assess the expenses?—There is no district in the diocese 120 miles from London.

2507. Call it 100 mile, 50 miles, and 10 miles; how would you deal with those cases?—As a matter of fact I cannot answer that, because I have never treated my work in that way.

*Chairman.*

2508. Taking the eight cases, and assuming, for the sake of illustration, that they run 10 miles, 15 miles, 20 miles, and so on, how would you proportion your expenses there?—As nearly as possible I should divide them equally.

2509. Would not that be rather hard upon the man who would only live 10 miles of?—I make a reduction off his.

2510. Then where do you put it on?—I put it on to the man who lives further off.

2511. Then they would not be equal?—I said in the commencement of my evidence that I charged them in proportion to the position that they occupied in the diocese.

Mr. *Beresford Hope.*

2512. Then, does not the man at Camberwell help disproportionately to pay your travelling expenses to the Isle of Wight?—No, he does not.

*Chairman.*

2513. At all events, according to your own views, you endeavour to apportion the expenses equally, and in making eight surveys which take you from London, you only charge the actual expenses and apportion them as you think best, and you do not make the separate charges to each of the eight people?—Certainly not.

2514. You charge your separate fees?—Yes, I charge my separate fees.

Mr. *Beresford Hope.*

2515. Does that system of clubbing your different visits, convenient as it may be in regard to expenses, produce delay as to the time of making your inspection?—I have had no complaint on that score.

Mr. *Knatchbull-Hugessen.*

2516. Do you agree with the last witness with regard to the policy which guides you in your surveys?—Yes, the case of Wise *v.* Metcalfe seems to me to embrace the whole law upon the subject.

2517. And you do not consider the condition that a house was in when the incumbent first had it?—I cannot see how it can be recognised under the law.

2518. Nor do you consider the value of the living?—That has nothing to do with the question.

Mr. *Freshfield.*

2519. Do you think that in the case of a building being in such a condition as to require rebuilding, you are at liberty and bound to order that it should be rebuilt?—Clearly so.

Mr. *Knatchbull-Hugessen.*

2520. Do you also concur with the last witness in regard to a fixed annual payment?—That is a matter which has had so little consideration, that I have not made up my mind upon it.

2521. You are not prepared to reject it, then, at once?—I am not prepared to reject it at once.

Mr. *Gregory.*

2522. You are acquainted, I suppose, with the case of Wise *v.* Metcalfe, which has been referred to several times before the Committee?—I am.

2523. Do you recognise that as the law with respect to ecclesiastical dilapidations?—It is the only law that we can follow now.

2524. And that you take as your standard as to dilapidations, and frame them upon that basis?—I do.

2525. The last witness spoke of good repair; do you hold to that principle?—I do not understand what is good repair in reference to ecclesiastical dilapidations. I did not hear the witness use that expression. I think it is a very difficult thing to say what good repair is. There is no doubt that substantial repair is good repair, but I question whether good repair in the general use of that term is always substantial.

2526. Is tenantable repair good repair?—Not as regards ecclesiastical houses.

2527. How would it be as between landlord and tenant?—I think "good repair" is an expression which should not be used at all.

2528. Do you consider it too indefinite a term?—Much too indefinite.

Mr. *Monk.*

2529. Were you appointed, when the Act first came into operation, for the diocese of Winchester?—I was.

2530. Have you heard any complaints with regard to a surveyor being bound by the acts and report of his predecessor?—No, I have not, but I believe that that is the law under this Act.

2531. A surveyor must give a certificate according to the surveys of his predecessor, although he may not agree as to the justice of the report, must he not?—I believe that that is so.

2532. Do you think that that requires alteration?—I think that it would be somewhat hard that it should be altered in the case of incumbents. On the other hand, I think that it may be hard not to alter it.

2533. We have had some cases in which an incumbent has received, say 50 *l.* or 60 *l.* under a previous survey; he has held the living for 18 months or two years, and on resigning the benefice the buildings have been re-surveyed by another surveyor, when the dilapidations have amounted to upwards of 200 *l.* Assuming that a different principle was observed by the two surveyors, does not that seem to inflict a hardship on the incumbent?—It does primarily, but I think you need to know all the details of the case before you can judge at all on a matter of that kind.

2534. Have you any other suggestions to make with regard to the alteration of the Act, or do you consider that it operates well in the diocese

Mr. *Monk*—continued.

diocese with which you are connected?—I am told so by those who have come under its action. There have been 45 cases under section 12, in the diocese of Winchester, and they all seem very well satisfied. Of course there are men who will never be satisfied with anything; there are plenty of those, not in my diocese, but one hears of them.

2535. Then so far as your duties as surveyor are concerned, you do not suggest any alteration in the Act?—I am not prepared, myself, to bring up any revision, but we have, as an association, prepared a paper showing what we, as an association, propose if the Act is amended. I am not prepared at this moment to put that in, but I believe it can be brought forward by one of the individual members of the association.

*Chairman.*

2536. Supposing that a house was very old, say 300 years old, and that you had to survey it on a vacancy, what would you do?—I think that it requires a great deal of judgment to deal with a matter of that kind. I presume you refer to half-timbered houses. It is very difficult to know how to deal under the Dilapidations Act with those buildings.

Mr. *Beresford Hope.*

2537. And I suppose also it is difficult to deal with the style of building which is so common in the south-eastern counties, of external tiling?—Yes; there is no doubt that the legal claims in those cases is to restore it even to rebuilding.

*Chairman.*

2538. You admit the difficulty, but that difficulty you have to grapple with?—There is a difficulty undoubtedly, but it has to be grappled with.

2539. And in some of those cases I suppose you have had to deal with it?—I have had one half-timbered house to deal with.

2540. What was the name of the place?—Odiham.

2541. What was the amount of the dilapidations in that case?—The amount, I think, was 240 *l.*, or about that sum.

2542. Was it a small house?—It was a comparatively small house.

2543. Have you had other cases of old brick houses with a quantity of timber about them?—I cannot say that those houses abound in the diocese of Winchester, but I have had some few of them to deal with.

2544. But as a rule, do you look upon it that in those cases the houses must be restored so as to make them perfectly substantial buildings?—Substantial, undoubtedly.

2545. Without reference to any state in which the incumbents might have found it before this Act came into operation?—That is the law.

2546. And you have carried it out?—Yes.

2547. And that you think is the view which surveyors generally take under the Act?—That I cannot say, but I think that it ought to be so.

2548. Do you act upon it?—Yes, I do.

2549. You say that you have had as many as forty-five cases under the voluntary portion of the Act; do you apply the same principle and mode of assessing dilapidations in those cases as you would on vacancy?—I do.

2550. And you make a claim as against them?—Yes.

2551. For whom do you think you are making a claim?—For the living.

*Chairman*—continued.

2552. That is to say, building up an ideal person as the living?—There is no doubt that the diocesan surveyor is the surveyor of the Church.

2553. Who constitutes the Church?—The kingdom at large, I should say.

2554. You act for the kingdom at large?—I act under the Act of Parliament for the Church.

2555. Under the voluntary application of the Act you act generally for the public?—Yes, I suppose that it might be considered to be for the public.

2556. But where there is a vacancy you represent the new incumbent?—No; I represent the Church just the same. I do not represent the incumbent in any form or shape.

2557. Then you do not allow anything more than scant justice to the man who comes and says, "I want to know how much the dilapidations are," than to a person who has gone away altogether by death?—Certainly not; the law is the same for one as for the other.

2558. Do you take any account of the dilapidations which might occur in the five years for which your certificates run?—No, I have nothing to do with that; I merely take what I see.

2559. You merely consider what is required to put the buildings in a proper state of repair for that time?—Yes.

2560. And then at the end of five years you go again and see what dilapidations have occurred?—Yes.

2561. Is Beckenham in your district?—It is not.

Mr. *Walter.*

2562. In the case of a parsonage that has been surveyed under the five years' clause, and for which a certificate is given to make it free for five years from that period, if a vacancy occurs in that living at the end of one or two years, is it liable to be then immediately re-surveyed?—Not under the Act, unless the incumbent who goes into it has reason to suspect that waste has occurred. If the new incumbent thinks that waste has occurred, he may call in the surveyor and claim of the late incumbent.

2563. But the late incumbent, or his executors, are not liable to the new incumbent for any dilapidations that may have occurred previously to the last survey?—I suppose not.

2564. The case which I put is that of an incumbent, who, by having his parsonage surveyed, has got his certificate for five years; my question is, whether, in the case of the avoidance of that benefice at the end of one or two years, the in-coming incumbent has any claim against the late incumbent in respect of damages or dilapidations previously to the last survey?—He has none except for waste.

Mr. *Knatchbull-Hugessen.*

2565. Did I correctly understand you to say that you believed that the majority of the clergy are satisfied with the Act as it stands?—In the diocese of Winchester I should say that it was so. With regard to one matter which has come before your Committee, the case of Hordle, in the diocese of Winchester, I should like to say that that was a matter in which considerable evidence was taken from the incumbent, and very little really transpired to show the nature of the injuries complained of. The evidence given by the incumbent, Mr. Ruston, as to the reason for his resignation of the living is very incomplete.

The Rev. JOHN BARTHOLOMEW PHILLIPS, called in; and Examined.

Rev. *J. B. Phillips.*

11 May 1876.

*Chairman.*

2566. WHERE are you Incumbent?—At Newchurch in Rossendale, in the diocese of Manchester.

2567. How long have you been incumbent there?—Twenty-six years.

2568. And you were called upon, I think, to build a parsonage house?—Yes, by the first Bishop of Manchester, under 1 & 2 Vict. c. 106, s. 62.

2569. Have you considered the Ecclesiastical Dilapidations Act of 1871?—I have; and I have placed in your hands my ideas on the subject. I was requested to do so, to assist Prebendary Gibbs, by my rural dean, and I undertook to do it, and I should feel obliged if you will lay them before the Committee.

2570. Will you state shortly to the Committee your views, as representing the clergy of your district, with regard to the alteration of the Act?—In the first place I would transfer the work from the bishop to the archdeacon; in the next place, I think that we should have an appeal to a court consisting of three persons, one appointed by the archdeacon, one by the patron, and another by the incumbent. I would suggest also that where a parson has built additional new buildings they should be taken into equitable consideration, and that in no case should he be charged upon those buildings after the termination of his incumbency. For instance, I have spent 4,000 *l.* upon my living, a considerable portion of it in building a house which met with the sanction of the bishop after it was built; and I should consider it a great hardship upon my family for them to be called upon to pay dilapidations in consequence of it.

2571. That is to say, where an incumbent has been called upon to erect new buildings, and has erected buildings which have passed the survey and obtained the certificate of some official architect?—I should consider that after the passing of the new Act nobody should be allowed to do it without first of all having an authority to do it.

2572. Supposing that the buildings were burnt down, what then?—That is provided for.

2573. In the case of great neglect what would you say?—Then it should be paid.

2574. Do you think that there should be more than the existing number of surveyors?—Yes, and I think what are called the inferior clergy should have the same privilege as the bishops and deans have, of selecting any surveyor approved by the Ecclesiastical Commissioners. With regard to the repairs fund, I would propose that every clergyman should pay a certain per-centage upon three-fifths of his living, in the same way as you pay an insurance, which should be managed by Queen Anne's Bounty Board.

2575. Do you mean on the value of the buildings?—On the value of the buildings. Another very particular point is, that I would insist upon having a terrier made in every parish; because, in my own instance, acres upon acres have been lost, and in many instances it is the same; I have lost a whole farm.

2576. That is rather another subject?—I think it might be well put in upon this subject.

2577. In the case of an out-going and in-coming incumbent, would you let each of them choose a surveyor to represent him?—Yes, if they could not agree upon one.

*Chairman*—continued.

2578. In case they disagreed, who would you suggest should choose an umpire?—Those two.

2579. From among surveyors that were stated to be qualified?—Yes.

2580. You think that there should be a payment to some constituted body like Queen Anne's Bounty Board?—Yes; but it should be an individual payment, so as to keep a separate account.

Mr. *Beresford Hope.*

2581. I understood that you had a grievance about having yourself built a house at considerable expense?—Yes, I have spent 4,000 *l.* upon the rectory house and farm buildings belonging to the glebe; I do not state it as a grievance; I am willing to do it, but I am not also willing that my representatives should be liable to pay dilapidations upon it.

Mr. *Walter.*

2582. You did not favour the Committee with the circumstances under which you built that house; under what circumstances were you led to build?—I received a letter from the then Bishop of Manchester. This was his letter: "Rev. and dear Sir,—I have received a communication from the Archdeacon of Manchester to say that you are about to be presented to me for induction to the living of Newchurch; I beg to draw your attention to the 1 & 2 Vict. c. 106, sec. 62, which it is my intention to enforce. Yours truly, ——————"

2583. What was the effect of that clause?—That he was empowered to mortgage my living to the amount of four years' income. I went to the House of Commons and saw the present Lord Winmarleigh, Colonel Wilson Patten, and one or two others, and they went with me to the Bishop; they said that he never would enforce it. I said that it was a very arbitrary thing that they should have spent 180,000 *l.* in buying palaces, and then that a man for whom they had built a palace should come down upon a poor incumbent and mortgage his living for four years. However, one or two of them went with me, and we went to Cox's, where the Bishop was stopping. He said he should insist upon it. Burder was with him, and he said: "You can borrow money from Queen Anne's Bounty," and I said, "No, I can't." He sent Burder down to Queen Anne's Bounty Office, and we stopped chatting about other matters, and finally he came back and said, "No, my Lord, Mr. Phillips is quite right, they will not lend the money." He said, "Oh, some new reading of the Act." Burder said, "No, the fundamental law of the society; it is above the value of 200 *l.*, and they will not assist him in any way."

*Chairman.*

2584. What is the value of your living?—I have quadrupled it; it was about 237 *l.* when I went to it, but I have spent 4,000 *l.* myself. I have quadrupled the value by seeing the Charity Commissioners, and inducing them to allow me to make long leases for 999 years, which they said was confiscating the property, but I pointed out to them how much more advantageous it would be, and they now let me do anything that I like.

2585. Do

Mr. *Knatchbull-Hugessen.*

2585. Do you endorse the statement which has been made by the two surveyors who have been examined to-day, that the clergy are generally satisfied with the working of the Act?—Certainly not; I cannot imagine so.

*Chairman.*

2586. What is the feeling in your own neighbourhood?—Very strongly against it; it was in consequence of our own ruridecanal meeting that I drew up that part especially as to the power of appeal.

2587. Do they require anything as to the appointment of surveyors?—No, they are content that the archdeacon and rural deans should appoint them.

Mr. *Beresford Hope.*

2588. But they do not think that the present number is sufficient?—No.

Mr. *Knatchbull-Hugessen.*

2589. Are you satisfied, or do you think that the clergy generally are satisfied, with the view taken by surveyors, that in estimating the repairs they shall not take into consideration either the value of the living or the condition of the house when the incumbent received it?—In our neighbourhood we are content to have them put into perfectly tenantable repair, as between landlord and tenant, but not to have fancy repairs.

Mr. *Knatchbull-Hugessen*—continued.

2590. Are you content with the present arrangement of unlimited discretion being left to the surveyor?—No.

2591. Do you think that it would be an improvement that that discretion should be defined, and that the dilapidations should be defined?—Yes.

Mr. *Beresford Hope.*

2592. You are perhaps aware that we have heard from the Bishop of Peterborough, the Archbishop of York, and other witnesses, the suggestion of something like a general insurance?—Yes; but I strongly object to that, and my proposal is, that there should be a particular insurance obligatory in each case, except upon those who have got the five years' certificate.

*Thursday*, 18*th May* 1876.

MEMBERS PRESENT:

| | |
|---|---|
| Mr. Birley. | Mr. Goldney. |
| Mr. Cowper-Temple. | Mr. Gregory. |
| Lord George Cavendish. | Mr. Beresford Hope. |
| Mr. Forester. | Mr. Monk. |
| Mr. Freshfield. | Mr. Wait. |

GABRIEL GOLDNEY, Esq., IN THE CHAIR.

Mr. PETER M'LAGAN, a Member of the House; Examined.

Mr. *P. M'Lagan*, M.P.

18 May 1876.

*Chairman.*

2593. YOU are a Landowner in Scotland, are you not?—I am.

2594. I think you are possessed of land in several parishes?—I am.

2595. Will you have the kindness to describe to the Committee what is done with respect to the dilapidations of the manses in Scotland, and on whom the burden of the repairs falls?—The burden of the repairs falls upon the heritors in Scotland; and perhaps I should make it clear to the Committee if I take the case of a clergyman entering upon his charge. Supposing that a clergyman is appointed to a particular charge, the first thing that he does is to see that his house is comfortable. He therefore makes an application to the heritors in his parish; a meeting of the heritors is called, and the state of the buildings is laid before them. If the demands of the clergyman are reasonable, the heritors at once grant them, and they make the repairs without any more ado. If the heritors consider the demands unreasonable, they object to them, and it then lies in the power of the clergyman to appeal to the presbytery of his bounds; and the presbytery appoint a committee of their number to see whether the repairs asked for by the clergyman are reasonable and necessary or not. If they consider them just and proper, they compel the heritors to make those repairs; but the heritors have the power of appeal from the decision of the presbytery to the sheriff of the county.

2596. Is the fund raised by an equal rate over the property of the heritors?—The fund is raised by an equal rate over the property of the heritors.

2597. Is there a standing committee in each parish to look after those repairs?—In the best managed parishes the heritors appoint a committee of their number to look after the whole of the buildings of the parish. The heritors are responsible, not only for the manses and offices, but also for the church, and this committee look after the buildings, and keep them in proper repair. That is the theory of the case, but very often the committee are very lax in their supervision, and the buildings are allowed to get into very bad repair, so that the demands of the clergyman are far more frequent than they would otherwise be. In some cases, where the clergyman is a man of business habits, the committee trust very much

*Chairman*—continued.

to him, and ask him to give them intimation whenever the buildings require any repairs; and with an outlay of a few pounds now and then, for many years the buildings are kept up, and do not require much repair. It is only when they are totally neglected, and no annual repairs made upon the roofing and upon the walls, that they get rapidly into disrepair, and then demands are made upon the heritors more frequently than they would otherwise be.

2598. Do the heritors do all the repairs, or only the structural portion, the roofs and walls?—They do all the structural repairs, sometimes even the papering and painting of the manse.

Mr. *Gregory.*

2599. Are the heritors the owners of property in the parish?—The heritors are the owners of property in the parish.

2600. Whether tenants for life or tenants in fee, I suppose?—The heritor is the owner in possession.

*Chairman.*

2601. Do the heritors' committee superintend those repairs when they are extensive, or do they trust the clergyman?—They never trust the clergyman if the repairs are extensive; they generally appoint an architect, and they appoint a committee of their number to act with the architect.

2602. So that they would act exactly as in the case of a college where the buildings were repaired by a general body; they would do it themselves, and leave the clergyman the benefit of it without cost to him?—Without any cost whatever.

2603. And that is general throughout the country?—It is general throughout the country; it is a law, in fact, compelling the heritors.

2604. Have you heard of any disputes as to the extent of repairs between the presbytery and the heritors?—No; disputes are very rare indeed. Up to this time the heritors and the church have acted very harmoniously. What the heritors complain of principally is, that where there are frequent changes in a parish, every new clergyman who comes into the parish has a right to require repairs, though repairs have perhaps been done three or four years before. A man,

for

*Chairman*—continued.

for instance, leaves who has a family of three children, and another man is appointed, perhaps, with a family of seven, and he insists, perhaps, on having an extra bedroom or two; that annoys the heritors a good deal; and they are beginning to call out now a little also in those parishes where there are few people attending the church. For instance, since the Free Church disruption took place, in many parishes in the Highlands there are very few people in the church, and the heritors in those parishes are complaining somewhat that they should be called upon every now and then to make repairs for a man whose people have left him and gone to another church altogether.

2605. But still, if a dispute does arise, it is generally adjusted between the presbytery and the heritors?—Yes, always.

Mr. *Freshfield.*

2606. Is not the arrangement with the incumbent for a fixed sum?—No, it is not fixed; there is very often an arrangement made that when extensive repairs have been made on the buildings, the heritors shall not be called upon to make any more repairs during the life of that incumbent; but that is what they call declaring the manse free, the incumbent's presbytery taking over the buildings from the heritors.

2607. Is not the incumbent paid by salary?—He has his fixed stipend, but that is quite a separate charge altogether.

2608. Is not the understanding and the arrangement with him that the stipend should be net, and that he shall not be called upon for any expenses?—They cannot touch his stipend at all; they cannot call upon the clergyman to make any repairs to the building.

2609. They cannot call upon him for any deduction?—They cannot call upon him for any deduction for repairs.

2610. You are probably aware that that is not the case in England, but that there is a certain sum of money from glebe or otherwise derived annually by the incumbent, which sum is liable to be reduced by these expenses of repairs?—I do not profess to know the English law very much, but I understand that there is something of that kind.

Mr. *Freshfield*—continued.

Mr. *P. M'Lagan*, M.P.

18 May 1876.

2611. You probably would think that the law and practice in Scotland did not bear any great analogy to the law in England if the stipend of the incumbent in England is reducible by such charges as these?—I should not like to express any opinion upon the analogy or the difference between the two laws; but if you ask me which I consider the better, I should say that the Scotch law is the better.

Mr. *Birley.*

2612. Is the manse vested in the presbytery, or in the heritors, or in the clergyman; who is considered to be the owner of the freehold?—No one party can act without the other.

2613. But the property must belong to some body, or to some person, or some corporation, I suppose?—It is church property; the heritors cannot dispose of it in any way without the consent of the presbytery.

2614. Are you aware that in England the freehold is supposed to be vested in the incumbent for the time being?—I should think that that is the law in Scotland also.

Mr. *Freshfield.*

2615. In point of fact, by your arrangements you find the incumbent a fixed salary which he has to spend, and you take all the expenses of maintaining his house upon yourselves?—Yes. I could say that we find it, because we cannot help ourselves. It is church property out of which the stipend comes; we buy the property subject to that burden, and we are obliged to pay the stipend and to make the repairs.

Mr. *Birley.*

2616. It is not a recent law in Scotland, is it?—No, it is an old law which has been in existence since the Church of Scotland was established, some two or three hundred years ago.

*Chairman.*

2617. You have never heard or experienced any difficulty in the repairs being carried out in this this way?—Never.

2618. And the clergy generally are satisfied with the mode in which the repairs are done for them?—Yes, they are quite satisfied.

The Reverend Michael Gibbs, called in; and Examined.

*Chairman.*

2619. You are a Member of the Lower House of Convocation, I believe?—I am.

2620. And you are chairman of a committee that was appointed some years back with reference to the Dilapidations Act of 1871, are you not?—I am.

Mr. *Beresford Hope.*

2621. And re-appointed in the present Convocation?—Yes.

*Chairman.*

2622. That committee have now made a report as to the operation of the Act of 1871, have they not?—They have.

2623. Have you a copy of the report?—I hold in my hand a printed copy of the report. The report is dated the 3rd of May, when the committee agreed to it, and it was presented at the first session afterwards, which I think was the 9th of May.

*Chairman*—continued.

Rev. *M. Gibbs.*

2624. Was the report an unanimous one?—There was a quorum, but I forget how many attended.

2625. How many are there on the committee?—Twenty-one.

2626. Was the report, on the whole, with some few exceptions, an unanimous recommendation?—Yes, upon the whole. One or two points some members of the committee demurred to, and that led to further debate upon those points in the Lower House of Convocation.

2627. Did the Lower House of Convocation accept the report?—Out of the 21 resolutions prepared, Nos. 9, 12, 17, and 18 were not passed, and No. 21 we had not time to go into.

2628. All the resolutions except 9, 12, 17, 18, and

Rev. *M. Gibbs.*

18 May 1876.

*Chairman*—continued.

and 21, were adopted by the House?—They were carried with a slight verbal alteration. In No. 20, after the word "deposits," in the second line, "beyond 100 *l.*" was inserted.

Mr. *Beresford Hope.*

2629. I presume that that committee proceeded, like other committees, voting on each clause successively?—The committee, whose report I hold in my hand, sent out a series of questions to the archdeacons of the province, and to some few other persons, and requested answers to those questions, and any other information that they might be pleased to send to us. Those returns came in to me, and I endeavoured to the best of my power to make a digest of them, and that led to the formation of the 1st edition. It was the chairman's duty to draw a draft report from the information which he received; that was sent to all the members of the committee and received their suggestions, and a new edition was then drawn up, and a meeting convened to settle it.

2630. Was the new edition drawn up previously to the meeting?—Yes.

2631. At the discretion of the chairman, from the information which he received?—Yes. Then a meeting of the committee was convened, and we went through the report clause by clause.

2632. And I have no doubt that you had numerous debates and divisions upon the different points?—Yes.

2633. And ultimately it was accepted by a majority of the committee?—Ultimately it was accepted by the committee as their report to the House.

2634. Has it come to your knowledge whether the Convocation of the Province of York has, or has not, taken any action upon the question of dilapidations?—I am not aware. Before the Act of 1871 passed, the York Convocation did take action, and the committee of York, and the committee of Canterbury met together in conference.

2635. You state that there was a debate upon your report in Convocation last week, and that your recommendations, with the few named exceptions, were adopted?—Yes.

2636. Is that, so far as you are aware, the end of action on the part of the Convocation of Canterbury, with regard to your report?—It is the end up to this time.

Mr. *Beresford Hope*—continued.

2637. But not necessarily a final end?—No; because our last resolution was to send up the points which we had agreed to to the Upper House for their Lordships to deal with.

2638. And you believe that the Upper House have not had the opportunity of considering the question?—I think they have not. We sent it up on the last day of meeting.

2639. At present it is the final conclusion of the Lower House?—It is.

Mr. *Freshfield.*

2640. I think Schedule C. of your report contains specific suggestions for the amendment of this Act of Parliament?—Yes, of several of its clauses.

2641. The earlier part of the report seems to deal with the information which you have collected; then I think Appendix A. states the law of incumbents as to dilapidations; and Appendix B. appears to be a definition of what dilapidations are; that I think is the general effect?—Yes; Appendix A. and Appendix B. were for the most part adopted from our former report of 1869.

2642. And Appendix C. contains your suggestions for the amendment of the Act?—Yes, they are suggestions in addition to those stated in the former part of the report.

2643. Do those suggestions cover all the faults which have been found with the law?—No, the report for the most part consists of new matter. Appendix C. suggests simply the alterations of various clauses in the Act.

2644. To meet the evils which you have found to exist?—No, not in every respect. I may refer you to the title of it, "Appendix C., setting forth other amendments besides those in the report."

2645. You do not cover all the ground of the amendments in the clauses?—No.

Mr. *Gregory.*

2646. Has that report been adopted by the Lower House of Convocation?—The resolutions at the end of it were for the most part adopted; four were not adopted, and No. 21 was withdrawn.

2647. Then those resolutions we may take as indicating the opinion of the Lower House of Convocation upon the question?—Yes.

Mr. Gordon Macdonald Hills, re-called; and further Examined.

Mr. *G. M. Hills.*

*Chairman.*

2648. You have a Tabular Statement, have you not, which has been prepared at the instigation of the Association of Diocesan Surveyors, showing the amount assessed as dilapidations and charges by surveyors, and the amount received since the passing of the Act up to the present time?—I have; the document is prepared by Mr. Bruton, the surveyor for the diocese of Oxford, and one of the secretaries for the province of Canterbury, under some instructions sent to him.

2649. Have you been a party to getting up the information for the purpose of preparing a table?—I have to the extent of furnishing him with the particulars for my own districts, and as a member of the committee which prepared and sent out forms to be filled up by the surveyors.

*Chairman*—continued.

2650. As far as you have been able to examine it, you think that it is a correct statement?—I have no doubt it gives correctly the particulars sent to Mr. Bruton by each surveyor, and Mr. Bruton has sent it to me this morning. He has worked it up with all possible dispatch, for the sake of its being laid before the Committee, with every intention to be correct and accurate; it has not been revised by the surveyors themselves in any way; but I think it may be taken as a correct statement.

Mr. FREDERICK CHANCELLOR, called in; and Examined.



*Chairman.*

2651. You are the Surveyor for one portion of the Diocese of Rochester, Mr. Hills having the other part?—Yes.

2652. I understand that you wish to make a statement before the Committee with reference to some evidence which has been given on a previous occasion?—Yes.

2653. Will you state what it is?—In the case of White Roothing, you mentioned that you had received a letter from the incumbent, stating that he could get no information.

2654. Was it a gentleman whose living was under sequestration?—Yes.

2655. Did he, notwithstanding the sequestration, pay the amount into Queen Anne's Bounty?—The amount was paid into Queen Anne's Bounty.

2656. Then did it fall upon you to do the repairs as surveyor under the Act?—Yes.

2657. Are they done?—Yes.

2658. You say in your letter that he stated that he had applied to you for information, but that he could not get it; that you say is not strictly in accordance with the state of things?—After I sent in my report I had a letter from him to say that he should like to see me, and as he was living in London he asked if I could give him an appointment in London, which I did. He met me in London, and he said that he should like, when the repairs were done, to have some alteration made in the stable yard. I told him that I should be very happy to carry out his views as far as I could, but I thought that as the living was under sequestration, he must obtain the consent of the bishop, the patron, and the sequestrator; and he said, "Well, I shall probably write to you again about it." I heard no more about it for some long time afterwards, and then I had another letter from him to say that he was still anxious to make some alterations, and that he should be glad to see me down there. I said that I should be happy to meet him, and he said that he should be going down shortly, and he would write to me again; but I have never heard from him from that day to this.

2659. There was some statement, I think, that you asked for your account in the meantime?—I never asked for the account.

2660. How were you paid?—The money is in Queen Anne's Bounty; I am not paid up to the present moment.

2661. Will you state to the Committee, in case of sequestration, how the charges of surveyors range; do you get the 5 per cent. in addition to the fees?—Not in addition to the fees for inspection; they are absorbed in the 5 per cent.

2662. What is this gentleman's name?—The Reverend Charles Maryon Wilson.

2663. In what year did this happen?—I received the bishop's order in 1872, and I received the intimation in 1874 that the money was paid into the Bounty Office.

2664. Then you made your inspection in 1872?—I made my inspection in 1872.

2665. Was the notice served by you then on the sequestrator?—I sent him a copy of my report.

2666. What did the report amount to?—£. 393. 5 *s.*

*Chairman*—continued.

2667. Did you set out the specification of the works?—Yes, a detailed specification.

2668. Did you fix a time within which the works should be done?—Yes; 18 months by the Act.

2669. The Act fixed the time, and not you, in that case?—Yes.

2670. Then it devolved upon you, as surveyor, to carry out the works yourself?—Yes.

2671. When was the money paid into Queen Anne's Bounty?—I received information in June 1874 that it was paid in.

2672. Did you receive anything from the sequestrator previously?—No, nothing.

2673. What is the value of the living?—I do not remember.

2674. When you received the notice that the money was paid in, what did you do?—I then proceeded to obtain a contract from a builder for carrying out the works.

2675. What was the amount of the contract?—The contract left sufficient to pay the fees, after deducting the fees from the 393*l.* 5*s.*

2676. Your valuation and report in 1872 you said was 393 *l.* 5 *s.*; what was the contract which you entered into with the builder?—£. 366.

2677. That was in 1874?—It was.

2678. Did that comprise everything that was in your specification?—Yes.

2679. What time was the builder to take to do it in?—The work was actually finished about a year ago.

2680. Was there a time specified in the contract for him to do it in?—I think it was within nine months; I have not the contract here, but I think that was the time.

2681. Did you draw the money out by degrees?—There is none of it drawn yet.

2682. Who has paid the builder?—He is not paid yet.

2683. When was the work completed?—The work was practically completed some months ago; but there were two or three small things which were not finished, and I held my certificate over until they were quite completed: they are now done, and I shall probably send my certificate in this week.

2684. Then your contract with the builder was one for a deferred payment for a year?—It was for payment as soon as the work was done.

2685. But nothing was to be got by him in the meantime?—No; if he had applied to me for a certificate, I should have given him one in the meantime; but he did not care for it.

2686. Do you not think that if a man could get his money from time to time, he could do work cheaper than if he had to wait a year or 18 months for it?—There is no difficulty about his getting it from time to time; I frequently give certificates during the progress of the works, especially where it is a small man in a village.

2687. Was this a small man?—No, he was a man who was doing two or three contracts in the neighbourhood; it is a very difficult place to get a good builder, in the middle of the Essex Roothings.

2688. But that does not make the work any cheaper?—No; but it is well done.

2689. How do you account for it that he wanted no portion of this 366 *l.* as the work went on?

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*Chairman*—continued.

on?—It was a small matter, and he did not care about it.

2690. Has he applied to you now to get his money?—Yes.

2691. What have you done?—I was prepared to give him his certificate.

2692. Have you examined the work?—Yes.

2693. When you give that certificate, what do you do about your own charges?—I should write a letter to the Bounty Office.

2694. And give a detailed statement of your charges?—Yes.

2695. And you have received nothing from the very first up to now?—No.

2696. Do you look to Queen Anne's Bounty to pay the whole of it?—I look to them to pay the balance that is in their hands.

2697. What will you do besides?—I shall be content with that.

2698. But supposing that instead of this contract being 366 *l.* it had come to 386 *l.*, what then?—If it had, I should have written to the sequestrator to say that I could not get the work completed for the amount.

2699. That is to say, that you would have got the work completed for the amount which you had paid in, but your fees would be extra?—Yes.

2700. Now you have a balance of 27 *l.* 5 *s.*?—Yes.

2701. Will that cover your fees and the commission too?—Yes.

2702. And you are content with that to cry quits?—Yes.

2703. But if it had not done so, then you would have looked to the sequestrator to pay you?—Yes; there was another case which Dr. Tristram mentioned. He was asked whether he knew of any case in which the Act had worked harshly; and he said that he had heard of a case in Essex, where there were one or two old cottages upon several acres of land, and the diocesan surveyor's report was for 400 *l.* I could not recognise the case when I heard him give that evidence, and when I got home I could not find any case at all approaching it. I immediately wrote to him, asking him to be good enough to give me the name of the benefice, in order that I might explain the matter to the Committee; but he has not replied to my letter.

2704. It is just possible that it might not have been in your diocese?—I have no case approaching it.

2705. There was a case about Felstead, was there not?—You asked Mr. Hills something about the case of Felstead, but he did not know anything about it, because it was in my part of the diocese. That case was before the Act came into force. In 1868, the Rev. Mr. Stanley, who was Vicar of Felstead, died; and Lord Cowley appointed the Rev. John Cox, who had been the chaplain of the British Embassy in Paris, to be vicar. It appears that some friend of his in England recommended to him a gentleman, who I believe was an auctioneer and land agent somewhere in Cambridgeshire, to assess the dilapidations for him, and to settle the whole business. He went over and he met the surveyor for the executors of the late incumbent, and between them they settled the dilapidations at 60 *l.* Some two or three months afterwards, in 1869, Mr. Cox requested me to advise him as to some alterations of the house which he wished to carry out. In going round the house, I saw that there were

*Chairman*—continued.

considerable repairs necessary, and I directed his attention to them.

2706. Eventually you got a new valuation, and he succeeded in getting 150 *l.*, I believe?—Yes, my valuation was 283 *l.* He could not get all that he was entitled to; it was a compromise.

2707. Has Mr. Cox left the living now?—No, he is there still.

2708. There was some other case mentioned by Mr. Hills, I think, in which you acted as architect for the new incumbent, and they thought that there had been hardship upon the old one; you occasionally act in carrying out your work as architect, I suppose?—Yes, I have done so.

2709. In that case do you charge your commission in the same way as if it was an independent matter?—Yes, but I do not charge the fees for inspection.

2710. Is there a charge for surveyor's commission in your diocese, whether you carry out the works or not?—Yes, the fee for a vicarage, where the dilapidations do not exceed 50 *l.*, is three guineas; where the dilapidations exceed 100 *l.*, it is 3 per cent. upon the excess.

2711. When you carry out the work yourself do you absorb the 3 per cent. in the 5 per cent.?—Certainly.

2712. Turning to another matter, one of the Members of the Committee wished to know what is done with regard to the ordinary dilapidations in Rochester, or in that neighbourhood, abstractedly from the Church altogether; supposing that a tenant of a farm or the tenant of a house goes out, what course do you take with regard to his holding?—The first thing to do is to read the lease on the agreement under which the tenant holds; that points out the extent of the dilapidations to which he is liable; he may not be liable for any dilapidations.

2713. Supposing that there is no agreement or lease, what repairs do you think that the tenant ought to do?—Ordinary tenantable repairs.

2714. The roof and walls and the outside painting, and all that would be done, I suppose, by the landlord?—If there was a broken tile the tenant would have to repair it, supposing that there was no agreement.

2715. That is according to the custom of your part of Essex?—Yes.

2716. According to your practice as an architect and surveyor in that district, in the absence of any special agreement or special covenants in a lease, what happens as to the obligation upon the landlord and the tenant upon a change?—So long as the different parts of the fabric answer their purpose, the outgoing tenant would not be called upon to restore them or to do substantial dilapidations; but he would be called upon to do tenantable repairs if there was a broken window, or a broken door, or a broken tile on the roof, or if the tiles had slipped off, or if the slates were broken.

2717. Would he be called upon to do painting?—He would be called upon to do outside painting if the woodwork was so bare that it was receiving damage, but not inside painting unless it was knocked and chipped about, unless it was suffering. If he had knocked and chipped it about, he would be liable for internal painting.

2718. Then, on a change of tenancy, there is a general expenditure for repairs, which falls upon the

*Chairman*—continued.

the landlord?—Yes; but of course there is no compulsion upon the landlord.

2719. But supposing that the house has to be decorated and whitewashed, or painted and papered inside, that, in the ordinary course of things, falls upon the landlord?—Not in the ordinary course of things, because the tenant would contribute something towards it. If it was damaged, he would do painting.

2720. In the absence of any special agreement, or special covenant, in a lease, what happens in every-day cases?—That would be an ordinary yearly tenancy, and the dilapidations would then assume the mildest form as regards the tenant.

2721. In such a case what would a tenant have to do according to either custom or usage, or according to your general practice, and what you have seen?—He would be called upon to repair broken windows, or broken doors, or any wilful waste.

2722. What he had allowed to be done by neglect, or damaged wilfully, he would be charged for?—Yes.

2723. But what had happened either by wearing out, or the painting getting dull, or decaying, or anything of that sort, he would not be liable for?—No; if the painting was simply dull and had lost its colour, but there was still paint, he would not be liable for painting; but if the painting had been worn off, and the woodwork outside were receiving damage from want of painting, that would amount to a dilapidation which the tenant, without special agreement, would be liable for.

2724. Have you ever known it enforced?—Yes.

2725. How?—I have claimed it many, many times, and I can give you the case of a farmer in Essex, I think the only case of dilapidations that I ever remember being tried, which came before Mr. Baron Channell (before he was Mr. Baron Channell, but when he was sitting for Mr. Justice Maule, who was ill). It was a case tried at Kingston, where the tenant held a farm and premises. I forget the name of the plaintiff, but the name of the defendant was Caldecott.

2726. What happened then?—I, acting for the landlord, made my survey of the dilapidations, and the amount came to over 100 *l.*, and the jury gave a verdict for that amount.

2727. You say that there was no agreement or lease in that case?—No, I think not; it was some years ago. My impression is that there was not an agreement, but I should not like to be certain about it.

2728. According to the ordinary usage, a thing that has been occasioned either by wilful neglect or by violence, or by allowing timber that requires to be protected by paint to be unpainted, that, you think, is an ordinary tenant's obligation?—Yes.

Mr. *Birley.*

2729. You said just now, in answer to the Chairman, that as regards the internal painting and decoration, the tenant would contribute to the expense; do you mean the outgoing tenant or the in-coming tenant?—The outgoing tenant.

2730. Then a certain charge would be levied on the outgoing tenant for the internal decorations?—Yes, it would practically resolve itself into this: if the tenant had chipped the paint in a room that was grained, he would be charged something for that damage.

Mr. *Birley*—continued.

2731. But what would happen with regard to the internal painting where it was not absolutely necessary for the preservation of the woodwork, but where it was desirable to make it habitable?—Unless he had damaged it I should not charge the outgoing tenant, for instance, not if it were faded.

2732. Where it was not absolutely necessary to replace it, you would make no charge upon the outgoing tenant?—No; although it might be necessary to replace it for the purposes of re-letting, I should not consider that, under a yearly tenancy, a charge that would fall upon the tenant.

2733. But we are not speaking of a yearly tenancy, but of a tenancy held not subject to repairs, which might be for a considerable period?—If it had been held for a considerable period, I should consider that the tenant was liable for the painting, if the painting was in a very bad state, and required renewal.

2734. Although no damage might have been done to the woodwork?—Although no damage might have been done to the woodwork.

2735. Is that by any law, or is it simply by custom sanctioned by law?—By custom.

2736. Have you much difficulty in making those arrangements, and in recovering the money; is it often disputed?—It is very often disputed.

2737. Do you charge certain fees for these valuations?—Yes.

2738. Are those fees paid by the outgoing tenant?—No, they are paid by the person who employs me.

2739. Who is usually the owner, I suppose?—Sometimes one, and sometimes the other.

2740. Is it often the practice of a tenant to employ a surveyor on his part?—Very often.

2741. And he, of course, pays those fees?—He pays those fees.

2742. Are those fees a per-centage?—Yes, always; the usual charge is 5 per cent., and no charge less than five guineas, or from three to five guineas; some surveyors make their minimum charge three guineas, but I think that the majority charge five guineas.

2743. In your experience do those charges claimed from the outgoing tenant for repairs amount to a proportionately larger sum, or to a smaller sum than the ecclesiastical dilapidations? Proportionately, I should say that they amount to a smaller sum.

2744. Do you think that they are arranged with more facility than the ecclesiastical dilapidations under the present law?—I do not think that they are; there is always a fight over civil dilapidations.

2745. Does that apply to all classes of houses?—Yes.

2746. What is the practice in regard to small cottages; I suppose that they never recover anything there?—In cottages the landlord always pays the rates and taxes, and does all the repairs except broken glass.

2747. Up to what value of house is that system carried?—In the case of every house that is let upon a weekly tenancy, the landlord would pay everything.

2748. As soon as you get to an annual tenancy, then you charge these dilapidations upon the tenant?—Yes, then the tenant takes upon himself the onus of the repairs.

2749. And you think that it is a more costly

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and troublesome proceeding than the present law of ecclesiastical dilapidations?—Undoubtedly.

2750. Should you be of opinion that it would be desirable to apply the law of ecclesiastical dilapidations, or any part of it, to civil cases?—I do not see how you could do so; it is a different thing altogether; two people have certain rights.

2751. Should you be of opinion that it would be desirable to make any transfer of the nominal ownership of ecclesiastical residences from the clergymen in possession to any public body or corporation?—That is rather a wide question, and I would rather not give an opinion upon it.

2752. To Queen Anne's Bounty Board, for instance?—I can imagine that it would be a very wise thing to do.

2753. Or to some diocesan board?—I do not think that there would be any difficulty in doing it, but I should think that the clergy themselves would object to their freeholds being transferred to some central authority.

2754. Although they might be relieved from a liability of a serious character?—If you offered them the bonus of relieving them from the dilapidations altogether, that probably would induce them to consent.

2755. But not if you merely relieved them from the extreme risk which occasionally occurs of a heavy charge upon the death of an incumbent or the resignation of an incumbent?—No, because the one would be a positive gain to them, and the other is a problematical gain.

2756. Do you think that the clergy in the diocese of Rochester are pretty well satisfied, as a whole, with the working of the present Act?—I think that they are; they see the considerable gain that there is to them by one surveyor being appointed instead of having to go through the ordinary fight of two surveyors and an umpire, as it was previously. I believe that they save more than half, and nearly two-thirds, of the cost that they used to be put to before.

2757. How many cases have come before you?—Up to the 1st of March, 124.

2758. And you believe that in the great majority of those cases the outgoing clergyman or his heirs have been satisfied with the decision?—Yes, because after the repairs are done, he feels that he has the opinion of a competent man that they are properly done. Many men would be themselves unable to form an opinion, but he feels that he gets a good opinion as to the way in which the repairs are done before he pays his money.

2759. So that, in point of fact, the repairs are more substantially effected; but are they not effected at greater cost to the outgoing incumbent than previously?—No, certainly not.

Mr. *Freshfield.*

2760. I did not quite collect the effect of one of your answers to my honourable friend. In the case of leases, of course the liability to dilapidations is regulated by the terms of the lease?—Yes.

2761. In cases of tenancy without written lease or agreement, the dilapidations are regulated by custom, are they not?—Yes.

2762. Do I correctly understand you to mean that the dilapidations under ecclesiastical law, run on all-fours, and agree with the dilapidations under your custom in cases of tenancy without agreement?—No.

Mr. *Freshfield*—continued.

2763. Will you, in a few words, state what the distinction is?—In a few words, the yearly tenant is liable for tenantable repairs, and the ecclesiastical tenant is liable for substantial repairs.

2764. Then the incumbent is, in fact, placed in the position of the landlord of the freehold?—Yes.

2765. Do you think that is fair to the incumbent?—It is the liability that he has fallen under.

2766. Do you not think that it is a very hard law which imposes upon him the liability of coming, perhaps, within two years afterwards to have to rebuild a house?—That is taking an extreme case; he pays no rent for his house.

2767. But I suppose that you admit, as other witnesses do, that the liability may amount to a rebuilding?—I have never had such a case.

2768. Nor have we had any witness who has; but all acknowledge that the liability to having to rebuild exists. However, not pushing it to the extreme, there might be a very heavy liability to dilapidations, amounting to hundreds of pounds?—Yes, there might.

2769. And that in cases where the stipend of the clergyman did not amount to above 100*l.*?—Of course it would entirely depend upon the size of the house and the extent of the buildings, and so on.

2770. We know that there are cases where there is a very large house upon a very small living?—Yes.

2771. And so in gradation there may be a moderate house or there may be a large house, or there may be a small house; but there may be a house in which the living brings in 100*l.* a year, and where there may be a liability imposed upon the incumbent of paying 300*l.* or 400*l.*, or perhaps 500*l.*, in the first two years of an incumbency?—There may be; but I have not heard of such a case.

2772. But you have probably heard of very heavy dilapidations amounting to more than one or two years' income of the incumbency?—Yes; I had one case where the dilapidations came to something like two or three years' income. That was a very peculiar case, and I made a special report to the bishop upon it.

2773. Had the incumbent to pay?—The late incumbent's estate was not able to pay it, and it was not paid.

2774. And then it fell upon the new incumbent, I suppose?—The property will be sold. It was a peculiar case, the only case that I have had of that kind, where a lady, deceased, left a row of old cottages, a large old tumble-down house, a range of old sheds, and a great quantity of fencing, for the augmentation of the living. The incumbent had accepted it, forgetting that he was rendering himself thereby liable for the repairs upon those premises.

2775. In such cases the existing law presses very heavily, does it not?—Yes. The bishop has consented to the property being sold.

2776. My honourable friend has asked you whether you do not think that it would be a very good arrangement, and a great improvement on the present system, if the liability to dilapidations fell upon, or were transferred to, Queen Anne's Bounty; what is your opinion on that point?—It would improve the position of the present incumbent

Mr. *Freshfield*—continued.

cumbent if anyone took the liability off his shoulders.

2777. Supposing that Queen Anne's Bounty, or any public board, would undertake the repairs of all those buildings, charging, say a small annual sum to the incumbent, would not that be a very greatly improved arrangement as applied to the incumbent?—At first sight it would appear that it would be so, and I was myself rather in favour of it; but there are some difficulties in the way of assessing the proper amount in each case, because I do not think that it would be fair to assess a similar rate upon an incumbent who had just completed his house as upon a house which was 150 years old and very much out of repair.

Mr. *Freshfield*—continued.

2778. There are no doubt difficulties in the way of carrying it out; but assuming those difficulties to be removed, the principle, I suppose, you admit would be good?—I am disposed to think that it would be.

2779. The incumbent, at all events, could not complain?—I should think not.

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Mr. Joseph Keech Aston, recalled; and further Examined.

*Chairman.*

2780. Since your former examination when you supplied the Committee with an account of the number of cases of dilapidations and of the sums that had been received at the Bounty Office, have you had any opportunity of examining the books so as to correct any small inaccuracies or supply the Committee with any additional information?—I have.

2781. What is the largest sum that has been received?—The largest amount paid in under the Act was a sum of 1,651 *l.* 1 *s.*, for the living of Mells, in the diocese of Bath and Wells.

2782. What is the smallest sum that has been assessed?—The sum of 1 *l.* for a living in the City of Norwich.

2783. You stated in your former examination that there were about 2,500 cases in round numbers; can you state in how many of them the amounts assessed have been under 20 *l.*?—In 262 cases the amount assessed has been under 20 *l.*

2784. What do they average?—They average 11 *l.* 15 *s.* 4 *d.* each.

2785. Can you state how many have varied between 20 *l.* and 50 *l.*?—Between 20 *l.* and 50 *l.* the number was 469, averaging 34 *l.* 18 *s.* 3 *d.*

2786. Has it occurred to you to group any of the larger cases together?—I took out a group of the principal cases, which I found were 21 in number, and they averaged 941 *l.*

2787. That is to say, 21 cases, including the large one which you mentioned before?—Yes.

2788. Taking the whole 2,500 cases, what is the general average?—£. 125 is the average of the whole 2,500 cases where the money has been paid to the Bounty Board.

2789. Have you any idea of the number of cases that have occurred in voluntary applications or in sequestrations?—The number of voluntary cases, I believe, would be found, if a Return was moved for from each diocese, to be as nearly as possible 460 actually completed; and of sequestration cases about 80.

2790. Have Queen Anne's Bounty Board any power at all in incomplete cases of getting them perfected?—Not any power whatever. The Queen Anne's Bounty Board act under the statute as bankers; they are the receivers of the money; they take care of it and pay it out when directed; they have no controlling power.

2791. What powers have the bishops in getting those cases perfected?—I think the bishops have all power under the Act, but then they take different views as to their duties; some bishops think that they are bound to pursue the case, and others think that it is quite within their province to let the matter die down and drop. Their remedy is that of sequestration, and, not unnaturally, the bishops shrink from subjecting a benefice to the process of sequestration.

*Chairman*—continued

2792. I suppose the order comes to you from some official source, does it not?—The Act directs that three copies of the order shall be prepared by the bishop, one to be sent to the registrar, to be filed, a copy of which he is to send to the Bounty Office; another to be sent to the incumbent; and the third to be sent to the late incumbent, his executors or administrators.

2793. When this order is sent to you, do you take any action by writing to the incumbent?—Under the statute, I am not required to do so; but the Board considered the subject, and directed me to afford every facility that I could to the responsible working of the measure; and therefore I always send a note to the incumbent in possession, to inform him that a copy of the order has been received at the Bounty Office; that he is entitled to claim from his predecessor, or the representatives, as the case may be, the sum of so-and-so; and that, as soon as he may receive it, it is his duty to pay it over to the Bounty Board; and at the foot of that paper, I annex certain extracts from the statute, which, I think, may be of use to him.

2794. You give him as much information as you think is necessary for him in the first instance, and, I suppose, you endeavour to make the operation of the Act as easy and agreeable to him as the payment of money can be made?—That is naturally and properly the endeavour of the office.

2795. I dare say you have a large quantity of correspondence with people as to postponing time, and so forth?—Yes, there are a good many letters.

2796. What communications do you make to the bishops or their secretaries with regard to the arrears?—When the time allowed by the Act for the payment of the money has expired, I then give the clergyman a reminder that the six months have elapsed, and mention to him, that if he does not pay the money within a few days it will be the duty of the office to report it to the bishop as a case in which the time has gone by, and the money has not come to hand.

2797. That is the preliminary letter that people get who do not pay their debts, I suppose?—Quite so, but there is no threat whatever.

2798. You, in fact, have no power whatever?—Not any. Then I communicate a quarterly list to the bishop of all cases that have come under

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under the notice of the office as being in arrear, and of cases in which either orders or certificates of completion have been received, or which appear to require the attention of the diocesan or of his officers.

2799. You keep the registrar or the secretary of the bishop posted up in the cases in their several dioceses?—Quite so, and there I leave it.

2800. Do you keep a register of the arrears?—There is an account opened for every case that comes under the notice of the office.

2801. Do you, apart from that, keep a quarterly register of arrears, and make it up?—Yes, I send out the quarterly report, and a note is made in the register that such reports have been sent from time to time to the bishop or his officers.

2802. What is the result of the registry at the present time as regards the number of cases in arrear?—Since my former examination I have looked over the registry, and I find that there are upwards of 500 cases which did not go through according to the Act, or which are not yet going on as the Act directs; cases which require some notice from the bishop, either at the present time or which did require it during their progress.

2803. Will you illustrate one of them?—There are four or five different kinds of them. There are cases completed, but not until a considerable time after the period directed by the statute; cases of partial execution of the work, part of the money being paid out, and apparently at a standstill; in many cases we have a small balance of money remaining in hand, but have not received the final certificate to state that the works have been completed; cases where the money has been disbursed but the certificate has not been received.

2804. Have you any cases where the certificate has been given, although the whole amount has not been paid in?—Yes, cases where the certificate has reached the office, but no money has ever preceded it.

2805. But have you had such cases as this: supposing that the dilapidations were assessed at 500*l.*, and that the incumbent only paid in 300*l.*, and that then the works go on, has the 300*l.* been drawn out?—Yes, there are many such cases; and then some of the certificates have exceptions to them. The Act does not appear to vest any discretion with the surveyor; he is bound to report that the works have been completed to his satisfaction; some of them think it right to report that, with certain exceptions, they have been so completed. I have from time to time intimated that my private opinion was that such a certificate was invalid and of no virtue, to give the incumbent the benefit of the five years' exemption. There are some cases where copies of the orders have never been received, although the money may have been paid into the office and paid out.

2806. Are the bishops generally aware of those discrepancies?—They are.

2807. Do you consider it to be their duty or your duty to attend to those cases?—It is clearly the duty of the diocesan; the Board have nothing to do practically but to act as the bankers.

2808. But you take those other duties upon yourself in the way of easing the operation of the Act?—Yes, and not unnaturally, I think, because the Board is a mixed Board of bishops and laymen, and the desire is to make the Act work as pleasantly as possible.

*Chairman*—continued.

2809. Have you had any complaints with regard to some diocesan surveyors keeping back their certificates?—I have; and I have taken upon myself to mention that I did not think it was a practice that ought to be pursued in any way by diocesan officers.

2810. But the practice does exist, does it not?—It does exist, undoubtedly; and I think that until I objected to it, it existed in the most objectionable form; that is to say, that all the certificates were retained so that the living was really damaged by the keeping back of the certificates; because under the Statute, the period of exoneration dates from the filing of the certificate, and if the officers, in the case of a parish in the diocese of A., kept back a certificate because the fees were not duly paid by the incumbent of a living in that diocese, the succeeding incumbent might, where the certificate had not been promptly granted, find that instead of the exoneration running from the completion of the works perhaps in the year 1871, the exoneration would run from the date of filing the certificate in the year 1875; so that there would be a nine years' exoneration instead of a five years' exoneration.

2811. Have you met with many cases like that which was mentioned by the last witness, where the amount assessed for dilapidations would be sufficient to do the repairs, and to cover the fees too?—Yes, there are cases in which I believe there is a surplus. In the loan cases, for instance, where the Bounty Board have lent the amount, most of them have had a surplus, which has had to be applied under the Statute to the reduction of the loan. Then I find from expressions which surveyors have used, and from information which has reached me, that they think it right to direct in their final certificate, without reference to the actual cost of the works completed, the payment to the incumbent of the balance. That saves the incumbent the trouble of coming to the Board to ask for the surplus which would otherwise remain on the account.

2812. You had made no public return of those sums that have been paid out, I think, until this Committee was appointed?—No, not any.

2813. What do you think with regard to the Act as it stands being effectively administered or otherwise?—I do not think that it is effectively administered.

2814. Will you explain to the Committee in what way you think that it is not effectively administered?—Because I think in different dioceses different principles prevail. Some of the bishops think themselves quite justified in altering the reports, whereas others would say that they had no right to interfere unless a complaint was lodged. In some dioceses an incumbent requests an inspection, the amount is assessed, and he is directed to do the works within a certain period; he does not do so; and the diocesan thinks it perfectly right to allow the matter to drop. Other bishops put a pressure upon the incumbent, and say, "Having called in a surveyor, the Statute requires me to see that you do the works, and you must do them."

2815. Are you of opinion that it would be better to have some general central authority in these matters if it is to be of a public character?—That is the opinion at which I have arrived.

2816. As long as it rested under the old law, as a matter between the outgoing and in-coming incumbents,

*Chairman*—continued.

incumbents, it was left for them to settle; but now, having been taken up as a public matter requiring officials of some sort or other to go into the question, you think that there should be some general controlling central arrangement or rule?—Yes, I think so; both for the purpose of carrying into effect any Statute that may exist upon the subject, and also for the wider and more important purpose of formulating the principles upon which the details of the several cases should be administered.

2817. Do you think that it is desirable to append to any amendment of the Act a definition of dilapidations?—I do not; I think that it would be most difficult, and I would rather leave that to a governing body; giving a right of appeal to the common law courts, upon a case to be stated by the governing body, upon any new and technical question.

2818. You have heard the suggestion of the Bishop of Peterborough, of making Queen Anne's Bounty Board the body to undertake this work in some shape or other, with certain modifications; do you think that it would be possible for them to undertake the work?—Yes, I think that Queen Anne's Bounty Board could undertake it.

2819. And it could undertake it without interfering with its general mode of administration?—Certainly, without interfering with the sum that they pay now; and if they were merely made receivers of the money, each case contributing its proper quota according to its own need, the duty would not interfere with their future funds. I think, for instance, that if fire insurance formed part of the arrangement, the profit incidental thereto would pay not only the Queen Anne's Bounty expenses, but the whole expenses of the administration, including all the fees of any officers that might be employed throughout the dioceses.

2820. Supposing that such a scheme was considered feasible, and endeavoured to be worked, do you think that a diocesan surveyor with perhaps one or two clerks of the works under him would be able to manage it in a diocese?—One or more diocesan surveyors with one or more clerks of the works.

2821. Are you of opinion that where the work was not of a very expensive character, and was merely repairing farm houses, and so forth, after the first inspection had been made a clerk of the works would be sufficient to see it carried out?—I think that it would be quite sufficient, and that it would be a more judicious class of labour to employ for the work to be accomplished.

2822. Supposing that Queen Anne's Bounty were made into a department or office for carrying out this matter, I suppose that one or two clerks of the works, or efficient men of that sort, similar to what they have in the Board of Works, would be all that would be required?—That would be all that would be required for the internal administration.

2823. I think that the practice of the Bounty Board in making grants for building, is to leave the incumbents to select their own surveyor if approved of by the bishop?—Yes, in the case of the application of trust money; but in the case of money lent under Gilbert's Act the joint consent of both the bishop and the patron to the architect to be employed is necessary.

2824. And then, as a mere matter of safety, you refer the plans to your own surveyor?—That is all that is done in the office, and all that is felt to be necessary.

*Chairman*—continued.

2825. Supposing that there were any arrangement made by which Queen Anne's Bounty Board undertook to find the money for the repairs, the report of the diocesan surveyor would be referred to the officer whom you have in your own office?—It would.

2826. And he would be a man whom you could send down on any occasion for the purpose of testing anything that you wanted to know?—No doubt; but I should scarcely think that it would be needful to send him down, because probably it would be an unnecessary expense.

2827. Do you think that the greater proportion of the parsonage houses throughout England are insured against fire?—Since my former examination, I have taken the opportunity of referring to the Privy Council Office, to which department the clergy are bound to make returns, and from the returns for the year 1874 it would appear that of 10,500 parsonage houses about 9,700 are insured.

2828. Are they generally insured in the name of Queen Anne's Bounty?—I should think that that part of the Statute of 1871 has been almost totally disregarded; because from the register which we have kept it appears that only about 800 incumbents have applied to the office to approve of the names of the insurance offices in which they proposed to take out their policies.

2829. Are you prepared to hand in to the Committee any suggestions with regard to fire insurance, and so forth?—Finding that the statute was being generally disregarded as to the concurrence of the Bounty Board in the name of the insurance office, I felt it my duty to hand in a report to the Bounty Board in the year 1873, which was afterwards, I believe, on the motion of Mr. William Henry Gladstone presented to your honourable House. That paper had been preceded in the year 1872, on the motion of Mr. Forster, by a return from the Privy Council as to benefices in England and Wales, the number of glebe houses insured, and the names of the offices in which they had been insured. I believe that those papers are out of print.

2830. Supposing that the suggestions of the Bishop of Peterborough were carried out either in whole or in part, do you think that the Bounty Board possess sufficient capital to aid the small livings as regards exempting them, or relieving them, or otherwise; what fund would the Bounty Board have at their disposal, assuming Parliament to sanction the application of it for this purpose?—At the present moment they would have upwards of a million applicable by way of loan; and by way of annual income, if Parliament should direct the diversion of it from the augmentation of the incomes of the clergy to the sustentation of their parsonage houses, they would have about 20,000*l.* a year; exclusive of the million. A million pounds of the capital would be applicable by way of loan, and if Parliament directed the diversion of the future annual income of the office to a new object, namely, that of maintaining parsonages instead of augmenting the income of the clergy, there would be 20,000*l.* a year applicable to that object.

2831. The capital of Queen Anne's Bounty, at the present moment, is somewhere in excess of three millions, I think?—It is, and the million

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*Chairman*—continued.

that I have mentioned is in the 3 per Cents., which is easily convertible into money.

2832. As regards that portion of it you see no difficulty?—No difficulty from want of means, the principles being agreed upon.

2833. The 600,000 *l.* which you advanced to the Ecclesiastical Commissioners, I think, remains still with them?—No, it was repaid some years since.

2834. I think you stated that you had instances in which the excess of the money had been paid back to the incumbent?—Yes, there have not been a large number of those cases; but still they are not very exceptional.

2835. I suppose that there are a good many cases where the balance is still remaining in your hands, not applied for?—A good many.

2836. Have you had any instances where the certificates have been given by the surveyor for very small sums?—Yes; in some instances we have had three certificates for a very small sum altogether; in one case there were nine certificates given.

2837. Where the surveyor has over-estimated the repairs, who gets the amount, the out-going or the in-coming incumbent?—The in-coming incumbent.

2838. That is to say, that the late incumbent, or his representatives, have to pay the amount, and the new incumbent stands the chance of its being more or less?—Quite so.

2839. And having themselves no voice in the matter, they are entirely dependent upon the views which the surveyor might take?—That is so.

Mr. *Birley.*

2840. That money is applied in the reduction of the loan, I understand?—Only of a loan under the Act of 1871; it would not apply to a loan under any other Act. Looking over the list of cases under 50 *l.*, there was one in the diocese of St. David's in which 29 *l.* was assessed, and that was paid out by three certificates. Another case, in the diocese of Durham, was 39 *l.*, and was also disbursed under three certificates.

*Chairman.*

2841. We have some evidence before us from Mr. Simons from the diocese of Gloucester and Bristol, who said that he had refused altogether to pay the money into Queen Anne's Bounty and had never done so, but had executed the repairs himself according to his own view, and did not care about the certificate or anything of the sort; do you know anything of that case?—That is a case in default which I have reported quarterly to the bishop as one in which the order for the payment of the money has never been attended to by the incumbent.

2842. But the only power vested in the bishop under the Act would be a sequestration, would it not?—That is so.

2843. Supposing the works to have been executed, the bishop would hardly venture upon a sequestration, would he?—No, I should think that he ought not to do so; but this clergyman does not wish, I understand, the surveyor to come over to inspect; and that is a case, the Statute being disregarded, which works injuriously to the succeeding incumbent.

2844. At the present moment you keep separate accounts of the money for each living, I understand?—That is so, just as a banker would keep a separate account for each of his customers.

2845. Do you see any more difficulty in carrying out an arrangement under the suggestions of the Bishop of Peterborough, as regards the labour of keeping these accounts, than there is now?—No, not any.

2846. I suppose that under the bishop's scheme, you would want some commission in each diocese, or a series of commissions for making these payments; what would you suggest as regards that?—I do not think that any commission would be required, unless a question of principle arose as to the application of money at any time when the repairs were wanted to be done. The collection of payments would be very much like collecting fire insurance premiums, or the tenths; and by systematising the working of the office, it would be really very little additional trouble to the department; because we have dealings in the way of either paying or receiving, with, I think, almost every clergyman in England and Wales, and it would be only one additional item of receipt. There are more than 3,400 open loan cases at the present moment; upwards of 5,000 of the clergy are paying tenths; and about 4,000 of them are receiving money from the office, so that it nearly covers the whole area.

Mr. *Beresford Hope.*

2847. I gather, from what you have just said, that your large experience has brought you to the conviction that there is a great deal of present hardship from the unequal and uncertain way in which the existing Act is worked in various dioceses?—That is so, in the main.

2848. Without going into any scheme like the Bishop of Peterborough's, you would propose to meet that evil by having some central regulating body?—Yes.

2849. Will you state a little more fully how you would constitute that body; would it be a clerical body, or a mixed body of clergy and architects, or would you bring in any external element also?—I think that probably if the duty were intrusted to the Board, they would appoint a specific committee. They have power under their charter to appoint committees for any particular object, and I should think that they would appoint a committee which they would call the Ecclesiastical Dilapidations Committee, and to them they would depute the work, reserving the power of appeal to the General Board.

2850. Do you mean that that committee should be composed of the existing governors of the Bounty Board?—Yes, I think so; and the number is so large, that I think there would be no difficulty in appointing such a committee as would be entirely satisfactory to Parliament on the one hand, and to the clergy on the other.

2851. Would it not also require a certain surveying element in it as well as a clerical element?—Not in the committee, I think; I would rather have such a committee as I have the pleasure of sitting before now.

2852. Would you propose that every dilapidation case should, as a matter of course, go before that committee, or that it should only be a tribunal of appeal?—The cases should all go before that committee, and they would pass on their own merits unless any question had been raised

Mr. *Beresford Hope*—continued.

raised by either party connected with the subject, and then it would be a kind of inquiry into the merits of the case.

2853. Then you would take away the jurisdiction from each individual bishop?—I should, leaving him to exercise his power as a member of the Bounty Board when any cases of his own diocese were before the Board.

2854. Every bishop should be a member of the committee for his own cases?—Yes; the committee would be a large one, probably, in order to meet that.

2855. You think that you have the elements of a committee in your body which would undertake what would probably be a difficult and sometimes an invidious work?—Yes, I think so, judging from the very good attendances that the governors now give to the ecclesiastical work of the office, and especially the lay members of the Board.

2856. I think you have stated that you do not think it would be a convenience to the committee to lay down anything like a general code of what dilapidations mean?—I scarcely think that it would be found to exhaust the subject, and the exceptions or the cases not met would give rise to probably as much difficulty as if they had to deal with the whole subject. I would rather give such a committee, being entirely an unpaid committee of high standing, absolute discretion.

Mr. *Freshfield.*

2857. I think you stated that you would have the Bounty Board undertake the insurance of all the glebe houses?—The fire insurance of all ecclesiastical property.

2858. Do you think, apart from other difficulties, that the amount they would have to insure would be enough to make the insurance safe and also profitable?—Yes, I have carefully gone into that subject; I did so some years since, when a Bill was laid before the other House of Parliament.

2859. What do you assume as the number of glebe houses?—Upwards of 10,000.

2860. Would you assume 500 *l.* each as the average amount of the insurance?—More than that. The amount of the value to be insured under the different Statutes varies. Under the Act of 1871 an incumbent is bound to insure for three-fifths of the value, and under another Statute he is bound to insure for three-fourths of the value, and under another two-thirds of the value.

2861. If there were 10,000 benefices, what would you allow for the average?—I think not less than 1,000 *l.*

2862. That would give, if I estimate it aright, an income of about 50,000 *l* a year, would it not?—It would yield a large sum, thousands per annum.

2863. That, you think, would afford the fair average necessary for the insurance being spread over a sufficiently large space?—I think so.

2864. And also pay its own expenses?—It would far more than do that.

2865. Will you allow me to ask you why the Bounty Board do not make advances upon small livings; is it under any Statute, or is it solely on the ground of prudence?—It is solely on the ground of prudence.

2866. What is your limit?—The limit varies with the income of the benefice and the popula-



Mr. *Freshfield*—continued.

Mr. *J. K. Aston.*

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tion of the parish. The object of the Board has been, on the ground of prudence, always to see that in the event of an incumbent being non-resident, the legal stipend of the curate would not exceed the difference between the annual interest and instalment repayable on the contemplated loan and the income of the living.

2867. If you extended the term for which the loan was made, so as to cover a greater number of years, would you not, in fact, be quite safe in lending the money?—Almost quite.

2868. Are you not a body with the main object of assisting poor incumbents; and would it not be the best and most advantageous thing for the clergy if you took their livings in charge as to dilapidations, and relieved them from that charge?—Yes, I am inclined to think so, personally.

2869. Probably you could not use your principles of charity upon any better system than that of easing them of the burden which falls so heavily upon them in the case of dilapidations, in many instances?—That requires some little consideration, because, if largely carried out, it would absorb the whole of the Governors' surplus income for the purpose of maintaining the parsonage houses in repair, and so cut off their ability to attract from the general public the large sums in benefactions which they now receive for the augmentation of the permanent income of the clergy.

2870. But without cutting that off, you have, if I understand you, a million of capital, and 20,000 *l.* of income, which you say might be applied to this purpose without any drawback?—No, I did not mean to say that; the 20,000 *l.* a year, if so applied, would exhaust their augmentation power altogether, and would prevent the church receiving, as it now does, from benefactors, 25,000 *l.* or 30,000 *l.* a year to meet the 20,000 *l.* referred to.

2871. Then you would probably think that you must not interfere with that branch of your duties?—It would probably be very undesirable to interfere with that.

2872. But you would have a million of money, at all events, to begin with in undertaking the repair of dilapidations of ecclesiastical buildings?—Yes; which million of money I personally think might be lent out to the clergy on easier terms than those on which they now obtain it. For instance, the poorer benefices, by having the loan for an extended period, could, consistently with prudence, be recognised as borrowers by the Office.

2873. And you think that by putting an annual charge upon the living you would, in fact, recoup yourselves before that million of money was exhausted in repairs?—It would all come back in due time.

2874. Therefore I understand you to think that the system which the Bishop of Peterborough laid down is a very advantageous one?—Yes, in principle, and it is not a new plan to myself, for I might mention to the Committee that in the year 1869 I printed some such plan.

2875. You think that it would work?—I think so. I went through my old plan yesterday, and I have slightly revised it, and, if the Committee like, I will hand it in (*handing in the same*).

2876. Have you at all considered the proportions in which you would levy the money annually upon the smaller livings and the larger livings?—I do not think that it would answer to expect

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Mr. *Freshfield*—continued.

the richer clergy to pay any part of the contribution required from poorer benefices; and therefore, where a poor benefice possesses a very large house and a very small income, and that large house was found on inspection to be in a very unsatisfactory state of repair, I would propose that a very large loan should be granted to the incumbent for a very long term, at the lowest possible rate of interest, that would meet the merits of the case as regards the lenders of the money; and the incumbent might appeal to the diocesan societies for aid to make up the deficiency that might be required in order to thoroughly re-establish his house. As the residence of the clergy is now required by statute, and is a matter of primary consideration, and the incumbent is not able to let the house in any way, but is bound to live in a particular house, I think it would be a very proper thing for public benevolence to come forward to assist the poor clergy in maintaining their residences.

2877. The effect of the arrangement would be to relieve the incumbent from some very hard applications of the Act of Parliament in cases of very large repairs, sometimes amounting to actual rebuilding, would it not?—Yes, that would be one effect of it.

2878. And the other effect would probably be that the Bounty Board, having the matter in their charge, would see that the repair was executed on the broadest principle, so as to establish the permanent stability of the building?—Yes, by a small annual charge on the benefice; and by having the power I suggest, without a faculty to authorise the taking down of unnecessary buildings; indeed, as far as possible, with the counsel of the patron, the rural deans, and any lay local commissioners to whom they might refer, to make things in that state in which they ought to be under existing circumstances.

2879. So that in effect the incumbents would have the enjoyment of their houses in fair condition without any risk of being called upon to incur an inordinate amount of expense in executing repairs?—Yes; I should propose to follow the principle of the Bishop of Peterborough's plan (which I find also in my own paper), and to relieve them altogether of the liability to be called to account for dilapidations; so that a new incumbent succeeding to a benefice would take it as he found it.

2880. I think you were present when Mr. M'Lagan was examined; you would, in fact, very much assimilate the English system to the Scotch system, where the minister has his fixed income undiluted, and the church is repaired by the heritors, who, in fact, have the largest interest in it, and who take care that the glebe houses shall be kept in repair?—I should go a little beyond the Scotch system, because I find on reference to Erskine's Institutes of the Laws of Scotland, that where a house is taken over in the way to which Mr. M'Lagan has adverted, the minister is liable for repairs.

2881. I suppose that is for his own delinquencies?—No. "When the manse is put in repair, the minister must keep it so." Under the Bishop of Peterborough's plan the parsonage would be put in sufficient repair, and the money payments would be presumed to keep it so; there would not be a floating and undefined liability, as there is still in Scotland in some cases. I do not think that that is often put in force, because the manse is not commonly taken over by the minister; it is left with the heritors.

Mr. *Freshfield*—continued.

Lord *George Cavendish.*

2882. Does any power exist now, where the residence is much too large for the resources of the living, of selling such house?—Yes, there is power to sell with certain consents; but those consents are very numerous, and it is somewhat expensive to obtain them. It involves the consent of the archbishop of the province, of the bishop of the diocese, of the incumbent of the benefice, and of the patron; so that I have known cases in which four different sets of solicitors have been employed to effect the object of parting with a residence altogether unsuitable to the benefice, and of a fifth for the acquisition of one that was suitable.

2883. Then there have been instances where those large houses have been sold?—Yes, they come under my notice, because under the statute the purchase money for a large house so sold is made payable to the treasurer of Queen Anne's Bounty to be held until a new house is acquired for the benefice.

Mr. *Birley.*

2884. You said that, in some of those cases where the houses were much too large for the income of the benefice, and were in a dilapidated state, they might very properly apply to the diocesan board for a grant-in-aid if there were such a board; in such a case would Queen Anne's Bounty offer any assistance if it were met?—That is a matter which has never been before the Board of Queen Anne's Bounty; and, as now regulated by statute, the Board have no power to meet a benefaction for repairs.

2885. In your opinion would it be very desirable that Queen Anne's Bounty Board should have the power of making a small grant in a case of that kind, if it were met by private benefactions from the patron, or others in aid?—That is my own opinion.

2886. If, for instance, by giving 100 *l.* they could get 500 *l.*, that would be a very desirable proceeding, would it not?—I think so.

*Chairman.*

2887. But that process would not be entirely shut up by the Bishop of Peterborough's scheme, would it?—It would open the door to it; but the Bishop of Peterborough proposed that it should be a matter of course that Queen Anne's Bounty should do it.

2888. As a matter of general consideration, do you think that the position and machinery of the office would enable it to attach this extra work to it if Parliament was disposed to confer the power upon it?—I think so.

2889. You gave a statement as to the average amount of expenditure for repairs in the cases that have come under the Act; what has been the total average cost per annum since the Act came into operation?—For the four years, the total amount paid in, in respect of the 2,500 cases exceeds 322,000 *l.*, and dividing that by four, it would be about 78,000 *l.* per annum.

2890. And that is exclusive of the voluntary cases?—Yes; but it includes the sequestration cases.

2891. So that in round figures, as far as the matters that come under Queen Anne's Bounty are

*Chairman*—continued.

are concerned, it has been about 80,000 *l.* a year?—It has.

2892. Can you tell the Committee how much on the average during a period of either five years or three years, or ten years, Queen Anne's Bounty Board has granted out of its own funds, both for repairs and for rebuilding?—In the last three years the amount of loans granted under Gilbert's Act (that is exclusive of the Dilapidations Act) was, in the year 1873, 180 cases, 97,800 *l.*; in the year 1874, 193 cases, 103,200 *l.*; last year, 1875, 136 cases, 65,000 *l.* That is under the general lending powers of the Board. Then there have been the loans under the Dilapidations Act, amounting in the four years since the Act has been in force, to 32,000 *l.*

2893. You are at the present moment lending for repairs and for rebuilding a sum larger than the sum for repairs alone under this Act, are you not?—That is so.

2894. So that, supposing everything was kept going like a railway rolling stock, not wanting entire rebuilding or reproducing, you would have practically the same amount of funds to deal with?—Yes, that would be so.

2895. And, in the small livings, the increase to Queen Anne's Bounty would probably enable you to lend to them without interest, and to make grants if the patrons or others met them by a benefaction, as you do in augmentations?—Not without interest, I think.

2896. Not if the patron made an augmentation?—Then I think a grant would be made to meet the augmentation.

*Chairman*—continued.

2897. Supposing that in a case where the dilapidations were 200 *l.*, the patron said, "I will advance 100 *l.* if you will lend the other 100 *l.* on the living, without interest, what would you think of that?—I think that that would be an improvement.

2898. If an augmentation was made you think that the funds of Queen Anne's Bounty could grapple with that difficulty?—I think so; I think that it would be an improvement of the existing law.

Mr. *Beresford Hope.*

2899. You heard the Bishop of Peterborough's suggestion, that Queen Anne's Bounty might make actual gifts of money to poor livings for surveyors' fees; what do you think of that suggestion?—I would rather enable the office to do that out of the profit of the fire insurance fund.

2900. You are favourable to the office having the benevolence to part with in some shape?—Undoubtedly I am favourable to the benevolent view of the subject; but I do not think the governors would deem the payment of surveyors' fees consistent with their original constitution.

Mr. *Birley.*

2901. It would be rather difficult, would it not, to separate the surveyors' fee from other charges, or to draw the line as to poor livings?—No doubt, but I think quite feasible.

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# APPENDIX.

## Appendix, No. 1.

PAPERS handed in by Mr. *J. K. Aston*, 6 April 1876. App. No. 1.

QUERIES to be answered by the INCUMBENT of a BENEFICE on Application to the Governors of QUEEN ANNE'S BOUNTY for a LOAN under the Provisions of "The Ecclesiastical Dilapidations Act, 1871."

| Sections of the Act to which the Query refers. | QUERIES. | ANSWERS. |
|---|---|---|
| 3 | What is the name of your benefice?<br>In what county and diocese?<br>Is it a rectory, vicarage, or what else? | |
| 17, 38, 63 | Has your bishop given his consent to your asking for a loan? | |
| 3<br>17<br>38<br>63 | Who is the patron of your benefice?<br>If more than one, state them all, and say which of them would be entitled to present or nominate if the benefice were now vacant?<br>Has he or have they given his or their consent to to the proposed mortgage?<br>Give the patron's address. | |
| 63 | What is the yearly income of your benefice?<br>State the particulars. | |

| INCOMINGS: | £. s. d. | OUTGOINGS: | £. s. d. |
|---|---|---|---|
| Tithe rent-charge - - | | Land tax - - - - | |
| Rent of estate - - - | | Tenths - - - - - | |
| Value of glebe land in hand - | | Synodals - - - - | |
| Fees - - - - - - | | Rent-charge (if any) - - | |
| Grants - - - - | | Poor and other rates - - | |
| | | Income tax - - - - | |
| | | Fire insurance - - - | |

| | |
|---|---|
| 63 | Is your benefice subject to any special payment—<br>To the minister of any church or chapel?<br>To pay off a mortgage?<br>To any other incumbrance?<br>If so, state the particulars. |
| | What is the population of your benefice according to the last census? |

App. No. 1.

| Sections of the Act to which the Query refers. | Queries. | Answers. | £. s. d. |
|---|---|---|---|
| | What was the date of your admission to your benefice? | | |
| | What was your age last birthday? | | |
| 13, 20 | Is your benefice under sequestration? | | |
| | State the amount you have expended in repairs during each of the last five years, if you have been incumbent during that time. | | |
| | Name the diocesan surveyor, on whose report as to the state of the buildings of your benefice you apply for a loan. Give his address. | | |
| 29 | Was the inspection made because the benefice was vacant? | | |
| 12 | Or on your own request? | | |
| 12 | Or on complaint; if so, who made the complaint? | | |
| 16, 32 | Was the report objected to? If so, by whom? | | |
| 6 | If the inspection was made on request or on complaint, a copy of the "Final Report" should be forwarded to the Secretary of Queen Anne's Bounty with these queries. | | |
| | What time has the bishop fixed for the execution of the repairs? | | |
| 17, 38 | How much of the sum stated in the "Final Report" or "Order" do you now ask the Government to lend? | | |
| 42 | If only a part of the whole sum estimated by the surveyor to be needed, state which of the specified works is not now to be executed, and why not. | | |
| 50 | Has the bishop authorised the postponement of | | |
| 71 | any part of the work? and has he, in consequence, required you to pay to the governors | | |
| 52 | any sum? If so, state the sum, and when payable. | | |
| 17 (2) 38 (2) | State the amount of costs and charges for the inspection, reports, &c., and how much is due— To the surveyor? To the registrar of the diocese? To the bishop's secretary. | | |
| 16, 32 | For the second report, if any, if you are made liable to its cost? | | |
| | ——— Legal opinion, if you are made liable to its cost? | | |
| 65 | The expenses of the mortgage loan, if granted, will be 1 per cent. on the sum lent, or 1 *s.* for every 5 *l.* or a fractional part thereof; no charge, however small the loan, is to be less than 10 *s.*; nor shall it exceed 5 *l.*, however large the loan. | | |
| | Do you now ask the governors to lend you the amount of these expenses? | Total Costs and Expenses - | |
| | What is the whole amount you ask the governors to lend? viz., for works, £. ; for costs, £. | | |

| Sections of the Act to which the Query refers. | Queries. | Answers. |
|---|---|---|
| | If you were appointed *prior* to the date of the Dilapidation Act (1 August 1871)—Did you receive any dilapidation money, if so, how much; and state if it has been duly expended. | |
| | If nothing received, state the reason why. | |
| 29 | If you were appointed *after* the date of the Dilapidation Act (1 August 1871)— | |
| 36 | Have you received any part of the sum due from the late incumbent? | |
| 40 | If so, how much? | |
| 37 | Have you paid the same to the governors? | |
| | What sum have you paid to the governors to the credit of your benefice? | |
| | If none, or only part received, state the reason why? | |
| 36 | Have you taken any legal steps to recover the sum due? | |
| 41 | Has the bishop enlarged the period for payment? | |
| 54 | Are the buildings belonging to your benefice insured against damage by fire? | |
| | If only some of them, state which, and for what amount, and in what office, and for what annual premium. | |
| 55 | What is the date of the policy, and is it effected in the joint names of the incumbent and the governors, as directed by the Act? | |
| 4 | Are any of the buildings belonging to your benefice let on lease? If so, which? | |
| 5 | Is the lessee bound to insure, rebuild, or repair the same? | |
| | State the name and address of the lessee, the rent he pays, the date of the lease, and of its expiration. | |
| 59 | In whose custody is the counterpart of the lease? | |
| | Are there any other circumstances relevant to the case which, in your opinion, may give weight to your application to the governors for a loan? | |
| | If so, please to state them. | |
| | Is there any probability of your vacating the benefice? | |

_____

_____ } Incumbent's Name and Address in full.

_____ Date.

# Appendix No. 2.

App. No. 2.

## PAPER handed in by Mr. *James Bull.*

### Ecclesiastical Dilapidations Act, 1871.

### ABSTRACT of Surveyors' Charges in the various Dioceses as set out in Appendix.

| DIOCESE. | Under Sects. 11—15, and Sects. 29—31. (Complaint or request.) (Vacancy.) | | Under Sect. 46, Final Inspection and Certificate. | Travelling Expenses, whether Inclusive or Additional. | Sect. 45, Superintendence of Works under this Section. |
|---|---|---|---|---|---|
| | First Inspection and Report. | Additional Charges in certain Dioceses. | | | |
| Canterbury | Rate of 4 *l.* 4 *s.* per day of eight hours; two days, 7 *l.* 7 *s.* | 1½ per cent. on amount of estimate. | Rate of 4 *l.* 4 *s.* per day, as under Sect. 14. | Inclusive | 2½ per cent., and travelling expenses. |
| York | 2 *l.* 2 *s.* to 5 *l.* 5 *s.*, according to extent of the buildings, &c. | 5 per cent. on repairs under Surveyor's direction; 2½ per cent. if otherwise. | Inclusive | Additional | 5 per cent. |
| London | 2 *l.* 2 *s.* to 6 *l.* 6 *s.*, according to extent of buildings, &c. | 3 per cent. on excess of 100 *l.* dilapidations. | 2 *l.* 2 *s.* | Additional | 5 per cent. |
| Durham | 3 *l.* 3 *s.* to 10 *l.* 10 *s.*, on graduated scale according to value of benefice. | — | Inclusive | Additional | 5 per cent. |
| Winchester | 2 *l.* 2 *s.* to 5 *l.* 5 *s.* | — | 2 *l.* 2 *s.* | Additional | 5 per cent.; minimum 5 *l.* 5 *s.* |
| St. Asaph | 4 *l.* 4 *s.* to 10 *l.* 10 *s.*, graduated scale according to value of benefice. | — | Inclusive | Inclusive | 5 per cent. |
| Bangor | 3 *l.* 3 *s.* to 4 *l.* 4 *s.*, graduated scale according to value of benefice. | — | Inclusive | Inclusive. | — |
| Bath and Wells | 3 *l.* 3 *s.* to 6 *l.* 6 *s.* | — | 2 *l.* 2 *s.* | Inclusive | 5 per cent. |
| Carlisle | 3 *l.* 3 *s.* per day | — | 1 *l.* 1 *s.* | Additional | 5 per cent. |
| Chester | 2 *l.* 2 *s.* to 8 *l.* 8 *s.*, graduated scale according to value of benefice. | — | 1 *l.* 1 *s.* to 2 *l.* 2 *s.* | Inclusive | 5 per cent. |
| Chichester | 3 *l.* 3 *s.* | 2½ per cent. on cost of repairs. | 1 *l.* 11 *s.* 6 *d.* and 1¼ per cent. when above 20 *l.* | Inclusive | As under Sects. 12–15, and travelling expenses. |
| St. David's | 2 *l.* 12 *s.* 6 *d.* | — | 1 *l.* 11 *s.* 6 *d.* | Additional | 3 to 10 per cent. according to amount. |
| Ely | 3 *l.* 3 *s.* | — | 1 *l.* 1 *s.* | Additional | 5 per cent.; minimum 3 *l.* 3 *s.* |

ABSTRACT OF SURVEYORS' CHARGES, &c.—*continued.* App. No. 2.

| DIOCESE. | Under Sects. 11—15, and Sects. 29—31. (Complaints or Request). (Vacancy.) | | Under Sect. 46, Final Inspection and Certificate. | Travelling Expenses, whether Inclusive or Additional. | Sect. 45, Superintendence of Works under this Section. |
|---|---|---|---|---|---|
| | First Inspection and Report. | Additional Charges in certain Dioceses. | | | |
| Exeter | 3 *l.* 3 *s.* per day<br>6 *l.* 6 *s.*, maximum | 1 *l.* 1 *s.* for report. | Half charges of first inspection. | Inclusive | 5 per cent. |
| Gloucester and Bristol. | 2 *l.* 2 *s.* per day | 1 *l.* 1 *s.* for report. | 2 *l.* 2 *s.* per day; + 10 *s.* for certificate. | Additional | 5 per cent. |
| Hereford | 4 *l.* 4 *s.* for one day<br>2 *l.* 2 *s.* each extra day<br>2 *l.* 12 *s.* 6 *d.*, half-day only | - | 2 *l.* 2 *s.*<br>1 *l.* 1 *s.*, half-day<br>+ 5 *s.* certificate | Additional | 5 per cent. |
| Lichfield | Rate of 4 *l.* 4 *s.* per day of eight hours; two days, 7 *l.* 7 *s.* | 1½ per cent. on amount of estimate. | 4 *l.* 4 *s.* per day, as under Section 14, &c. | Inclusive | 2½ per cent., and travelling expenses. |
| Lincoln | 3 *l.* 3 *s.* per day | - | 1 *l.* 1 *s.* | Additional | 5 per cent. |
| Llandaff | 3 *l.* 3 *s.* to 8 *l.* 8 *s.*, graduated scale according to value of benefice. | - | - | Inclusive | 5 per cent. |
| Manchester | 2 *l.* 2 *s.* to 6 *l.* 6 *s.*, according to extent of buildings, &c. | - | 4 per cent. on outlay. | Additional | 4 per cent. and fees. |
| Norwich | Under Sects. 12–15, 3 *l.* 3 *s.*<br>„ „ 29–31, 5 *l.* 5 *s.* | - | 2 *l.* 2 *s.* | Additional | 5 per cent. |
| Oxford | 3 *l.* 3 *s.* | Report, 5 *s.* | 2 *l.* 2 *s.* | Inclusive | 5 per cent. |
| Peterborough | 2 *l.* 2 *s.* to 5 *l.* 5 *s.*, according to time occupied. | - | 1 *l.* 1 *s.* to 2 *l.* 2 *s.* | Additional | 5 per cent.; minimum 5 *l.* 5 *s.* |
| Ripon | 2 *l.* 2 *s.* to 8 *l.* 8 *s.*, graduated scale according to value of benefice. | - | 1 *l.* 1 *s.* to 2 *l.* 2 *s.* | Inclusive. | — |
| Rochester | 5 *l.* 5 *s.* | - | 2 *l.* 2 *s.* | Additional | 5 per cent. |
| Salisbury | 3 *l.* 3 *s.* for first day<br>2 *l.* 2 *s.* for each succeeding day. | - | 2 *l.* 2 *s.* | Additional | 5 per cent. |
| Worcester | 4 *l.* 4 *s.* for first day<br>3 *l.* 3 *s.* each succeeding<br>2 *l.* 12 *s.* 6 *d.* half-day only | - | 2 *l.* 12 *s.*<br>1 *l.* 11 *s.* 6 *d.*, half-day only. | Additional | 5 per cent. |

*Note.*—The above comprise the ordinary and general charges but certain fees are also payable in addition for special services under Sections 22, 50 and 51, 52, 54, 57, 58 and 59, 70 and 71. The fees payable by Incumbents to the Archbishops' and Bishops' secretaries, and to the Registrar in the different Dioceses in respect of proceedings under the Act are independent of and in addition to the Surveyors' fees, and are set out in detail in the Appendix.

## Appendix, No. 3.

Appendix, No. 3.

PAPERS handed in by Mr. *James Bull.*

## ECCLESIASTICAL SURVEYORS' ASSOCIATION.

THE Association consists exclusively of surveyors appointed under the Ecclesiastical Dilapidations Act, 1871.

The general object of the Association is to promote uniformity in practice in carrying out the Act.

President:—Joseph Clarke.

Vice-President:—Gordon M. Hills.

COMMITTEE:

Province of Canterbury.

| | |
|---|---|
| A. R. Barker. | G. R. Crickmay. |
| E. L. Blackburne. | H. Goddard. |
| F. Chancellor. | T. Fowler. |

Province of York.

| | |
|---|---|
| W. Bell. | R. Nicholson. |
| C. J. Ferguson. | C. Sherlock. |

Hon. Sec. for the Province of Canterbury:—E. G. Bruton, Oxford.

Hon. Sec. for the Province of York:—R. J. Johnson, Newcastle.

Hon. Sec. of the Association, and Treasurer:—Lacy W. Ridge, 23, Bedford-row, London, W.C.

SURVEYORS of ECCLESIASTICAL DILAPIDATIONS appointed under the ECCLESIASTICAL DILAPIDATIONS ACT, 1871.

| DIOCESE. | SURVEYORS. | DISTRICT. |
|---|---|---|
| Canterbury | *Joseph Clarke, F.S.A., 13, Stratford-place, London, W. | Diocese. |
| York | *C. N. Armfield, Whitby | Archdeaconry, Cleveland. |
| Ditto | *Jas. Demaine, 86, Micklegate, York. | Archdeaconry, York. |
| Ditto | *F. S. Brodrick, Cogan's Chambers, Hull. | Archdeaconry, East Riding. |
| London | *Gordon M. Hills, 12, John-street, Adelphi, London, W.C. | Diocese. |
| Durham | *R. J. Johnson, 15, New Bridge-street, Newcastle-on-Tyne. | Diocese. |
| Winchester | *A. Rowland Barker, 11, Buckingham-street, Strand, London, W.C. | Diocese. |
| Bangor | *Henry Kennedy, Bangor | Diocese. |
| Bath and Wells | *C. R. Wainwright, Shepton Mallett. | Diocese. |
| Ditto | *E. Hippisley, Wells | Diocese. |
| Ditto | *A. Whitehead, Clevedon | Diocese. |
| Carlisle | *C. J. Ferguson, 50, English-street, Carlisle. | Diocese. |
| Ditto | *Crayston Webster, Kendal | Diocese. |
| Chester | *C. Sherlock, 63, South John-street, Liverpool. | Diocese. |
| Chichester | *Lacy W. Ridge, 23, Bedford-row, London, W.C. | Diocese. |
| Ely | *John Day, 30, Gwyn-street, Bedford. | County Bedfordshire, with Deaneries of Leightonstone, St. Ive's and St. Neot's, in Huntingdonshire. |

Those Surveyors marked (*) have become members of the Ecclesiastical Surveyors' Association.

| Diocese. | Surveyors. | District. |
|---|---|---|
| Ely | *W. M. Fawcett, M.A., 1, Silver-street, Cambridge. | County Suffolk, with Deaneries of Huntingdon and Yaxley, in Huntingdonshire. |
| Ditto | *R. Reynolds Rowe, 10, Emmanuel-street, Cambridge. | County Cambridge, with the Isle of Ely. |
| Exeter | *E. L. Luscombe, St. Sidwells | Archdeaconry, Exeter. |
| Ditto | G. Arnold, Dolton, North Devon | Archdeaconry, Barnstaple. |
| Ditto | *T. Lidstone, Dartmouth | Deaneries of Woodleigh, Totnes, Ipplepen and Moreton, in the Archdeaconry of Totnes. |
| Ditto | J. M. Andrew, Ridgway Plympton, Devon. | Deaneries of Plympton, Tamerton, Tavistock, and Okehampton, in the Archdeaconry of Totnes. |
| Ditto | H. Burt, Launceston | Eastern Division of Cornwall. |
| Ditto | *T. R. Olver, Green Bank, Falmouth. | Western Division of Cornwall. |
| Gloucester and Bristol | *F. S. Waller, 18, College-green, Gloucester. | Diocese, Gloucester. |
| Ditto | *T. S. Pope, Guildhall Chambers, Bristol. | Diocese, Bristol. |
| Hereford | *Thomas Nicholson, Hereford | Diocese. |
| Lichfield | *C. Lynam, Stoke-on-Trent | Archdeaconry, Stafford. |
| Ditto | *F. J. Robinson, 45, Friars Gate, Derby. | Archdeaconry, Derby. |
| Ditto | *Thomas Groves, The Priory, Shrewsbury. | Archdeaconry, Salop. |
| Lincoln | *James Fowler, Louth | North Lincolshire. |
| Ditto | *Henry Goddard, Lincoln | South Lincolnshire. |
| Ditto | *T. C. Hine, 4, Victoria-street, Nottingham. | Nottinghamshire. |
| Llandaff | John Prichard, Llandaff | Archdeaconry, Landaff. |
| Ditto | *W. P. James, Canton, near Cardiff. | Archdeaconry, Monmouth. |
| Manchester | *William Bell, 51, King-street, Manchester. | Diocese. |
| Norwich | *John H. Brown, Cathedral Offices, Norwich. | Diocese. |
| Ditto | *E. L. Blackburne, 33, Bernard-street, Russell square, London, W.C. | |
| Ditto | *R. M. Phipson, F.S.A., Norwich and Ipswich. | |
| Oxford | *E. G. Bruton, 17, New Inn, Hall-street, Oxford. | Diocese. |
| Peterborough | *C. A. Macaulay, Leicester | Archdeaconry, and County of Leicester. |
| Ditto | *Edward Browning, Stamford | Northern Division of the Archdeaconry of Northampton, which includes the County of Rutland. |
| Ditto | *Thomas G. Jackson, Devereux Chambers, Devereux-court, Temple, London, W.C. | Southern Division of the Archdeaconry of Northampton. |
| Ripon | *Ralph Nicholson, 53, Parliament-street, London, S.W. | Diocese. |
| Rochester | *Fredk. Chancellor, Chelmsford | Archdeaconries, Colchester and Essex. |
| Ditto | *Gordon M. Hills, 12, John-street, Adelphi, London, W.C. | Archdeaconries, Rochester and Hertfort. |
| Salisbury | *Henry Weaver, Devizes | Archdeaconries, Wilts and Sarum. |
| Ditto | *G. R. Crickmay, Weymouth | Archdeaconry, Dorset. |
| St. Asaph | *Edward Jones, Caxton-buildings, Wrexham. | Diocese. |
| St. David's | *Richard H. Harvey, 6, Victoria-place, Haverfordwest. | Diocese. |
| Ditto | William Williams, Brecon | Radnor and Brecon. |
| Worcester | *Henry Rowe, 17, Foregate-street, Worcester. | County Worcester. |
| Ditto | *Francis Willmot, 6, Waterloo-street, Birmingham. | County Warwick. |

Appendix, No. 3.

## DIOCESE OF CANTERBURY.

### Ecclesiastical Dilapidations Act, 1871.

The following Fees to be paid to the Archbishop's Secretary and Registrar, for Work done in pursuance of the Act, were, at a Meeting held at Lambeth Palace, on the 15th July 1872, fixed for the Diocese of Canterbury.

Fees to be paid to the Archbishop's Secretary for Work done in pursuance of the Act, in respect of the Duties cast upon the Archbishop.

| Sections. | | £ | s. | d. |
|---|---|---|---|---|
| 12, 14, 16, 22. | In relation to inspection of benefice, on complaint or request:— | | | |
| | In uncontested cases | 1 | 1 | – |
| | In contested cases | 2 | 2 | – |
| 13. | In relation to inspection of benefice under sequestration:— | | | |
| | The like fees. | | | |
| 29 to 35. | In relation to inspection of benefice on vacancy:— | | | |
| | In uncontested cases | 1 | 5 | – |
| | In contested cases | 2 | 10 | – |
| 23, 43, 57. | In relation to the sequestration of a benefice:— | | | |
| | For the Archbishop's fiat | – | 10 | 6 |
| 17, 38, 49. | On Archbishop's consent to loan to incumbent, including correspondence and attendances | – | 10 | 6 |
| 19, 41, 52. | On Archbishop's order for extension of time for execution of repairs (Sect. 19), on enlargement of period of payment (Sect. 41), or postponement of works (Sect. 52) | – | 10 | 6 |
| 20, 42, 50. | On Archbishop's consent for repairs to be deferred (Sect. 21), or to rebuilding (Sect. 42), or for alterations and remodelling in lieu of repairs (Sect. 50) | – | 10 | 6 |
| 57. | On proceedings under Sect. 57, the same fees as on proceedings on a complaint | | | |
| 70. | On consent of the Archbishop to non-liability of incumbent in respect of buildings pulled down, for which other buildings have been substituted: including attendances, examination of papers and plans, and correspondence relating thereto | 2 | 2 | – |
| 70. | For the Archbishop's authority upon application of incumbent, with consent of patron, for removal of buildings and application of proceeds: including perusal of application, and consent, attendances, and correspondence | 2 | 2 | – |

Additional:—

For each copy of, or extract from, surveyor's report or specification, 4*d.* per folio of 72 words.

For taking counsel's opinion, the usual professional charges.

Fees to be paid to the Registrar.

| Sections. | Particulars of Work. | Fee. £. | s. | d. |
|---|---|---|---|---|
| 23 a 43. | For sequestration of profits of benefice when ordered by the Archbishop, exclusive of stamp | 2 | 14 | 4 |
| | Government stamps for ditto | | | |
| 27. | Filing surveyor's certificate in registry | – | 5 | – |
| | Sending copy thereof, as here directed | – | 5 | – |
| 35. | Filing copy of Archbishop's order | – | 5 | – |
| | Sending copy thereof to the Governors of Queen Anne's Bounty | – | 5 | – |
| 46. | Filing surveyor's certificate of completion of work | – | 5 | – |
| 50. | Filing special certificate of surveyor | – | 5 | – |
| 55. | Perusing and recording receipt of premium for insurance | – | 5 | – |
| 57. | Filing surveyor's certificate given in case of fire | – | 5 | – |

*A. C. Cantuar,*
Chairman.

DIOCESE OF CANTERBURY—*continued.* Appendix, No. 3.

## SCALE of CHARGES of DIOCESAN SURVEYORS.

| SECTIONS OF THE ACT. | | |
|---|---|---|
| 14, 15, 29, 30, and 31. | On receipt of order to inspect, travelling to and from the specified buildings, making survey with necessary measurements and notes, and drafting report. | At the rate of 4 *l.* 4 *s.* per day of eight hours; if this work occupies two days, 7 *l.* 7 *s.* to be charged, including all travelling expenses. |
| | Bringing measurements into shape for and making estimate and other office work. | 1½ per cent. on amount of estimate. |
| | For every copy of report and estimate beyond the three copies required by the Act, which are included in office work. | 2 *s.* 6 *d.* to 5 *s.* |
| 46 | Inspection of works on completion, and certifying the same. | At the rate of 4 *l.* 4 *s.* per day of eight hours, as under Sect. 14, &c. |
| 22 | On receipt of order to inspect, travelling to and from the specified buildings, making inspection and report. | At the rate of 4 *l.* 4 *s.* per day of eight hours, as under Sect. 14, &c. |
| | Copies of report - - - - - - - - - | 2 *s.* 6 *d.* each. |
| 44 | On receipt of order to inspect, travelling to and from the specified buildings, making inspection, and issuing certificate. | At the rate of 4 *l.* 4 *s.* per day of eight hours, as under Sect. 22. |
| 45 | Superintendence of works: including all inspections reports, examination of accounts, and issue of certificates. | 2½ per cent. on the cost, and travelling expenses. |
| 50 and 51 | (*a.*) On receipt of order to prepare drawings, specification, and estimate, and preparation of the same; and superintending the execution of works, including all services in connection therewith. | 5 per cent. on cost, and travelling expenses. |
| | (*b.*) On receipt of order to inspect, travelling to and from the specified buildings, making inspection, and special certificate. | At the rate of 4 *l.* 4 *s.* per day, as under Sect. 22. |
| | Copies of special certificate - - - - - | 2 *s.* 6 *d.* each. |
| | (*c.*) As under Sect. 44 - - - - - - | Charge as under Sect. 44. |
| | (*d.*) As under Sects. 14, 15, &c. - - - | Ditto - ditto Sects. 14, 15, &c. |
| | (*e.*) As under Sect. 50 and 51 (*a*) - - - - | Ditto - ditto Sects. 50 and 51 (*a*). |

*Note.*—All further correspondence, and all attendances, to be included in the above charges.

## DIOCESE OF YORK.

TABLE of FEES to be Paid under the ECCLESIASTICAL DILAPIDATIONS ACT, 1871, as fixed at a Meeting of the Archbishop, Archdeacons, Rural Deans, and the Chancellor of the Diocese, 12th December 1871.

| SURVEYORS. | £. | *s.* | *d.* |
|---|---|---|---|
| 1. For surveying both house and premises, and chancel, if no repairs are required - - - - - - - - - - - - - | 3 | 3 | – |
| 2. For either house and premises only, or chancel only, if no repairs are required - - - - - - - - - - - - - | 2 | 2 | – |
| 3. For surveying farm buildings, in addition to the above, if no repairs are required, *additional* - - - - - - - - - - - - | 2 | 2 | – |
| 4. If repairs are required in the above cases, and if they are executed under the Surveyor's direction, 5 *l.* per cent. on the outlay, with a minimum of 5 *l.* 5 *s.* | | | |
| 5. If the repairs required are not executed under the Surveyor's direction, then 2½ per cent. on the outlay, with a minimum of 4 *l.* 4 *s.* | | | |
| 6. For valuation of damage by fire, under Sect. 57 - - - - - - | 2 | 2 | – |
| 7. The travelling expenses actually disbursed to be in all cases paid, in addition to the above charges. | | | |
| 8. In every case the certificates, estimates, and all things required by the Act, are to be included in the above charges. | | | |

Appendix, No. 3.

DIOCESE OF YORK—*continued.*

| ARCHBISHOP'S SECRETARY. | £. | s. | d. |
|---|---|---|---|
| 1. Making Copy of Complaint, and forwarding the same to the Incumbent or Sequestrator. (Sects. 12, 22) | – | 3 | 6 |
| 2. Preparing Archbishop's direction to surveyor to inspect | – | 2 | – |
| 3. Drawing up order by Archbishop, stating the repairs and their cost, for which the late Incumbent of a benefice, his Executors or Administrators, is or are liable | – | 5 | – |
| 4. Making and sending each copy thereof, persuant to the Act | – | 2 | 6 |
| 5. *Sequestration.*—The same fees as in the case of a sequestration under 1 & 2 Vict. c. 106. | | | |
| **REGISTRAR.** | | | |
| 1. Sect. 23. The same as in the case of a sequestration under 1 & 2 Vict. c. 106. | | | |
| 2. For filing each document required by the Act | – | 2 | 6 |
| 3. For making and sending every copy of order or certificate | – | 3 | 6 |

*Note.*—The above Table of Fees is to be in force for one year from 12 December 1871.

## DIOCESE OF LONDON.

### ECCLESIASTICAL DILAPIDATIONS ACT, 1871.

### FEES for the SURVEYOR.

| SECTIONS. | | £. s. d. |
|---|---|---|
| 12 to 15 on complaint or at request, or, 29 to 31, on vacancy. | When no survey; for correspondence, report, and copies | 1 1 – |
| | When, in addition to the last, a visit is made, add | 1 1 – |
| | When the survey relates to a chancel, and no other buildings, or to glebe land with fences only; for survey and report | 2 2 – |
| | When the survey relates to other buildings than the chancel or the fences; for survey and report | 4 4 – |
| Ditto. | When the survey and report includes a chancel, as well as other buildings, add to the above four guineas | 1 1 – |
| Ditto. | When the glebe exceeds 30 acres, with buildings thereon other than fences, and other than one residence and its offices, add to the above four guineas | 1 1 – |
| Ditto. | Within the City of London, and the district of the Metropolitan Board of Works, for every house after the first, whether or not that one be the residence of the incumbent, except where Sections 58 and 59 operate, add to the above four guineas, provided such additional fees do not exceed 10 guineas | 0 10 6 |
| Ditto. | For each copy of report, and delivery of same | 4 *d.* per folio. |
| Ditto. | When the amount of dilapidation exceeds 100 *l.*, add | 3 per cent. on the excess. |
| 22, 44, 46. | For inspection of the work, with or without certificate or report | 2 2 – |
| 44. | For certificate without inspection, and sending the same | – 10 6 |
| 46, 50. | For each copy of certificate, and sending same | – 2 6 |
| 45. | For the ordinary duty of an architect herein required, including ordinary and special inspections, and certificates and sending the same | 5 per cent. on amount of outlay. |
| 50, 51. | For certificate, and making and sending copies | 2 2 – |
| 52. | For certificate for postponement of work | 1 1 – |
| 57. | For inspecting ruin, and giving certificate in triplicate when the dilapidation is under 100 *l.* | 2 2 – |
| 57. | For dilapidations exceeding 100 *l.*, up to 1,000 *l.*, add on the excess | 2 per cent. |
| 57. | For dilapidations exceeding 1,000 *l.*, on the excess above 1,000 *l.* | 1½ per cent. |

DIOCESE OF LONDON—*continued.*

| SECTIONS. | | £. s. d. |
|---|---|---|
| 58. | For inspecting, specifying, and estimating the dilapidations, for which the incumbent, and not the lessee, is liable, on the estimated cost of the repairs - - - - - - - - - | 3 per cent. |
| 58. | For inspection of repairs, for which the tenant is liable, per house - | – 10 6 |
| 59. | For examining each lease, or its counterpart, provided that when the leases are identical in their repairing covenants, the fee, after the first lease, shall be reduced one-half - - - - - - | – 10 6 |
| 70, 71. | For advising when called upon - - - - - - - - - | 1 1 – |
| | For valuing the amount to be insured, when called upon to do so - | 1 1 – |
| | For every copy of report, or certificate, where not otherwise provided for in these charges - - - - - - - - - | 4 *d.* per folio. |
| | For travelling, and for workmen's expenses aiding surveys - - | Amount actually disbursed. |

Confirmed at a meeting held at London House, 29th December 1872, to take effect from 9th October 1872, for three years.

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FEES to be Paid to the BISHOP'S SECRETARY for Work done in pursuance of the Act in respect of the Duties cast upon the Bishop.

| SECTIONS. | | £. s. d. |
|---|---|---|
| 12, 14, 16, 22. | In relation to inspection of benefice on complaint or request:— | |
| | In uncontested cases - - - - - - - - - - | 1 1 – |
| | In contested cases - - - - - - - - - - | 2 2 – |
| 13. | In relation to inspection of benefice under sequestration:— | |
| | The like fees - - - - - - - - - - - | |
| 29 to 35. | In relation to inspection of benefice on vacancy:— | |
| | In uncontested cases - - - - - - - - - - | 1 5 – |
| | In contested cases - - - - - - - - - - | 2 10 – |
| 23, 43, 57. | In relation to the sequestration of a benefice:— | |
| | For the Bishop's fiat - - - - - - - - - - | – 10 6 |
| 17, 38, 49. | On Bishop's consent to loan to incumbent, including correspondence and attendances - - - - - - - - - - | – 10 6 |
| 19, 41, 52. | On Bishop's order for extension of time for execution of repairs (Sect. 19), on enlargement of period of payment (Sect. 41), or postponement of works (Sect. 52) - - - - - - - - | – 10 6 |
| 21, 42, 50. | On Bishop's consent for repairs to be deferred (Sect. 21), or to rebuilding (Sect. 42), or for alterations and remodelling in lieu of repairs (Sect. 50) - - - - - - - - - - | – 10 6 |
| 57. | On proceedings under Section 57, the same fees as on proceedings on a complaint. | |
| 70. | On consent of the Bishop to non-liability of incumbent in respect of buildings pulled down, for which other buildings have been substituted: including attendances, examination of papers and plans, and correspondence relating thereto - - - - - | 2 2 – |
| 71. | For the Bishop's authority upon application of incumbent, with consent of patron, for removal of buildings and application of proceeds: including perusal of application, and consent, attendances, and correspondence - - - - - - - - - | 2 2 – |
| | Additional:— | |
| | For each copy of, or extract from, surveyor's report or specification, 4*d.* per folio of 72 words. | |
| | For taking counsel's opinion, the usual professional charges. | |

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Appendix, No. 3.

DIOCESE OF LONDON—*continued.*

FEES to be Paid to the REGISTRAR.

| SECTION OF ACT. | PARTICULARS OF WORK. | FEE. £. | s. | d. |
|---|---|---|---|---|
| 23 and 43. | For sequestration of profits of benefice when ordered by the Bishop, exclusive of stamps | 2 | 14 | 4 |
| | Government stamps for ditto | | | |
| 27. | Filing surveyor's certificate in registry | – | 5 | – |
| | Sending copy thereof, as here directed | – | 5 | – |
| 35. | Filing copy of Bishop's order | – | 5 | – |
| | Sending copy thereof to the Governors of Queen Anne's Bounty | – | 5 | – |
| 46. | Filing surveyor's certificate of completion of work | – | 5 | – |
| 50. | Filing special certificate of surveyor | – | 5 | – |
| 55. | Perusing and recording receipt of premium for insurance | – | 5 | – |
| 57. | Filing surveyor's certificate given in case of fire | – | 5 | – |

## DIOCESE OF DURHAM.

### ECCLESIASTICAL DILAPIDATIONS ACT, 1871.

### FEES AND CHARGES OF SURVEYOR.

For all Work, Certificates, and Reports, and any other Charges, under Sections of the Act 12 to 15, 29 to 31, 44 to 46, 58 and 59, the following scale of Fees shall be paid:—

| | £. | s. | d. |
|---|---|---|---|
| Benefices at or under 200 *l.* gross income | 3 | 3 | – |
| „ „ 300 *l.* „ | 4 | 4 | – |
| „ „ 400 *l.* „ | 5 | 5 | – |
| „ „ 500 *l.* „ | 6 | 6 | – |
| „ „ 600 *l.* „ | 7 | 7 | – |
| „ „ 700 *l.* „ | 8 | 8 | – |
| „ „ 800 *l.* „ | 9 | 9 | – |
| „ And above 800 *l.* „ | 10 | 10 | – |
| For each inspection and report under Section 22 | 2 | 2 | – |
| For all work done under Section 50 to 52, including the advising of the Bishop if required, a special fee of | 2 | 2 | – |
| For certifying in triplicate, and any other work done under Section 57 | 2 | 2 | – |
| For advising the Bishop as to consent, if required, under Section 70 or 71 | 1 | 1 | – |

Travelling expenses will be allowed at the rate of 3 *d.* per mile for the journey and return by Railway, and for costs disbursed for coach or horse hire.

### FEES FOR REGISTRAR.

The Fee of 5 *s.* for the Registration of each report, with 2 *s.* 6 *d.* for each copy which he is required by the Act to make, if such copy do not exceed four folios. If it exceed four folios the payment to be 6 *d.* per folio for each copy.

### FEES FOR BISHOP'S SECRETARY.

That for work done by the Bishop's Secretary under Sections 12, 13, 14, 16, 22, 29-35, 70 and 71, the fees in uncontested cases be one guinea, and in contested cases two guineas, with a fee of 4 *d.* per folio for each copy of or extract from Surveyor's Report of Specification. And that for work done under other Sections the fees be those adopted in the Diocese of Canterbury.

# DIOCESE OF WINCHESTER.

## Ecclesiastical Dilapidations Act.

The following Scale of Fees came into operation for this Diocese, 19th April 1875, and will continue in force unless further revision should be found necessary.

### Fees payable to the Secretary.

| Sections of the Act. | | £. | s. | d. |
|---|---|---|---|---|
| 12, 13, 14, 17, 29, 34, 38, 44, 63. | For all work under any or all of these Sections - - - - | 1 | 1 | – |
| 16, 22, 32, 45, 49. | Ditto - - ditto - - - - - - - - - | 1 | 1 | – |
| 19, 21, 41, 42, 50, 52. | Ditto - - ditto - - - - - - - - - | – | 10 | 6 |
| 23, 43. | Ditto - - ditto - - - - - - - - - | – | 10 | 6 |
| 70, 71. | Ditto - - ditto - - - - - - - - - | 1 | 1 | – |
| | Taking opinion of counsel; usual professional charges. | | | |
| | Copying documents and papers other than the forms, per folio of 72 words - - - - - - - - - - - | – | – | 4 |

### Fees payable to the Registrar.

| Sections of the Act. | | £. | s. | d. |
|---|---|---|---|---|
| 27, 35. | Filing any document - - - - - - - - - - | – | 5 | – |
| | No fee payable under Section 55. | | | |
| | Making and sending copies, per folio of 72 words - - - | – | – | 4 |
| | Subsequent search, if inspection required - - - - - | – | 1 | – |
| | Usual charges on sequestration. | | | |

### Fees payable to the Diocesan Surveyor.

| Sections of the Act. | | £. | s. | d. |
|---|---|---|---|---|
| 12 to 15, or 29 to 31. | When no survey, for correspondence, report, and copies - - - | 1 | 1 | – |
| | When, in addition to the above, a visit is made, add - - - | 1 | 1 | – |
| | When the survey relates to a chancel, and no other buildings, or to glebe lands (not exceeding 30 acres) with fences only, or both, for survey, report, and copies - - - - - - - - | 2 | 2 | – |
| | When there are farm buildings, with or without a house, for any tenant, or the glebe exceeds 30 acres, or both, add - - - | 2 | 2 | – |
| | For the work required on the first inspection, except in cases otherwise provided for, together with report and one copy of the same - - - - - - - - - - - - | 5 | 5 | – |
| | For other copies of the report, and sending the same, per folio - | – | – | 4 |
| | The specifying in detail required by the Act is to be sufficiently explanatory to enable a trustworthy contractor to estimate for the execution of the work in all ordinary cases of repair, or to enable an architect, after personal inspection of the premises, to prepare full specifications and instructions necessary for contractors to tender upon. | | | |
| | For every inspection subsequent to the first, except in cases otherwise provided for, supposing application for the survey is made within six years of the date of the last survey - - - - - | 2 | 2 | – |
| | *N.B.*—The last proviso not to apply in cases of vacancy. | | | |

Appendix, No. 3.

DIOCESE OF WINCHESTER—*continued.*

FEES payable to the Diocesan Surveyor—*continued.*

| Sections of the Act. | | £. | s. | d. |
|---|---|---|---|---|
| 22. | Section 22 would also come under this fee under like circumstances. | | | |
| 12 to 15, or 29 to 31. | For every house after the third, whether or not either of these three be the residence of the incumbent, except when Sections 58 and 59 operate, add to the above five guineas, provided such additional fees do not exceed 10 guineas - - - - - | | 10 | 6 |
| 22. | If the repairs are found sufficient - - - - - - | 2 | 2 | – |
| | If the repairs are found insufficient, the report made is to be tantamount to one made under Section 15, and is to be charged at a like rate. | | | |
| 44 and 46. | For inspection of the work, with or without certificates or report - | 2 | 2 | – |
| | For certificates without inspection, and sending the same - - | | 10 | 6 |
| 45. | For the work done under this Section, 5 *l.* per cent. on the outlay, with a minimum fee of 5 *l.* 5 *s.* This charge is to include all certificates under Sections 44 and 46. | | | |
| 50 and 51. | For certificate, making and sending copies - - - - - | 2 | 2 | – |
| 52. | For certificate, 10 *s.* 6 *d.*; but if personal inspection of the premises be required - - - - - - - - - - | 2 | 2 | – |
| 57. | For survey and report, together with certificate in triplicate, as under Sections 14 and 15. For certificates for the payment of money during the progress of the works, as under Sections 44 and 46. | | | |
| 58 and 59. | The work done under this Section not to be charged for separately. | | | |
| 70. | For advising the bishop as to consent, if employed, and if no inspection of the buildings is necessary - - - - - | 1 | 1 | – |
| | If inspection is necessary, according to the amount of work - - | 1 to 3 | 1 to 3 | – |
| 71. | The same as under Section 70. For expenses of travelling in all cases actually disbursed. | | | |

(Approved),

24 April 1875. *E. H. Winton.*

## DIOCESE OF ST. ASAPH.

### ECCLESIASTICAL DILAPIDATIONS ACT, 1871.

### FEES for the SURVEYOR.

For work done under Sections 12 to 15; 29 to 31; 44 and 46:—

| | £. | s. | d. |
|---|---|---|---|
| On benefices under 200 *l.* per annum (net) - - - - - - - | 4 | 4 | – |
| Ditto - 400 *l.* „ „ - - - - - - - | 6 | 6 | – |
| Ditto - 600 *l.* „ „ - - - - - - - | 8 | 8 | – |
| Ditto, above 600 *l.* „ „ - - - - - - - | 10 | 10 | – |
| For each inspection and report under Section 22 - - - - - | 2 | 2 | – |
| For certificate required and work done under Section 45, 5 per cent. on the outlay. | | | |
| For each certificate under Sections 50, 51, 52, 57 (in triplicate where required) - - - - - - - - - - - - - | 1 | 1 | – |
| For work done under Sections 58, 59 - - - - - - - - | 1 | 1 | – |
| For advising the bishop as to consent (if employed) under Sections 70, 71 - - - - - - - - - - - - - | 1 | 1 | – |
| For a second inspection during the same incumbency, after five years - | 2 | 2 | – |

3 February 1873.

*Edward Jones,*
Diocesan Surveyor.

Appendix, No. 3.

## DIOCESE OF BANGOR.

### Ecclesiastical Dilapidations Act, 1871.

I would mention that for the two years when the first scale was in use I was a very considerable loser, and I fear that the present scale will not prove to be remunerative; especially as in many instances there are from four to five farms, distant from each other, belonging to the benefices.

*First Scale.*

| For each inspection: | £. | s. | d. |
|---|---|---|---|
| Of all benefices under 150 *l.* a year, net value | 1 | 15 | – |
| Ditto over 150 *l.* and under 300 *l.*, net value | 2 | 5 | – |
| Ditto of 300 *l.* a year and upwards | 2 | 15 | – |

Such payments including travelling expenses, and every charge respecting each benefice, including certificate.

*Second Scale, now in force.*

| For each inspection: | £. | s. | d. |
|---|---|---|---|
| Of all benefices under 150 *l.* a year, net value | 3 | 3 | – |
| Ditto over 150 *l.* and under 300 *l.*, net value | 3 | 13 | 6 |
| Ditto of 300 *l.* and upwards | 2 | 4 | – |

Expenses as before.

*Henry Kennedy.*

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My charges in this diocese have been settled as follows:

| For each benefice inspected: | £. | s. | d. |
|---|---|---|---|
| As registrar | 1 | 1 | – |
| As secretary | 1 | 1 | – |
| Total £. | 2 | 2 | – |

These, I believe, are exceptionably low.

*Robert L. James.*

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## DIOCESE OF BATH AND WELLS.

### Ecclesiastical Dilapidations Act, 1871.

Rate of Charges to be paid to the Surveyors of Ecclesiastical Dilapidations for Work done in pursuance of the Act, fixed at a Meeting convened under Section 10, and held at Highbridge, in the said Diocese, on the 12th day of September 1871, and continued by adjournment on the 15th day of November 1871.

| Sections. | | £. | s. | d. |
|---|---|---|---|---|
| 12 to 15, or 29 to 31. | For work required, together with one copy of report (save in the exceptional cases mentioned below), viz.:— | | | |
| | Vicarage house and offices | 4 | 4 | – |
| | Vicarage house, glebe, and buildings | 5 | 5 | – |
| | Rectory house and offices, with chancel | 5 | 5 | – |
| | Rectory house, offices, buildings, and glebe, with chancel | 6 | 6 | – |
| 21 and 22 | Each inspection and report | 3 | 3 | – |
| 44 and 46 | For certificate and making and sending copies when not employed under Section 45:— | | | |
| | (*a.*) Where no repairs are necessary | – | 10 | 6 |
| | (*b.*) Where repairs are necessary | 2 | 2 | – |
| 45. | For superintending works and giving necessary certificates, including the final certificate under Section 46. | 5 *l.* per cent. on outlay. | | |
| 50 and 51 | For certificate and making and sending copies | 3 | 3 | – |
| 52. | For certificate required | – | 10 | 6 |
| 57. | Certificate in triplicate | 3 | 3 | – |
| 58 and 59 | If directed to survey, then according to extent of premises in lease and the time occupied based on the terms herein. | | | |
| 70 and 71 | If employed to advise the bishop | 2 | 2 | – |
| | For additional copies of reports, per folio of 72 words | – | – | 4 |

Appendix, No. 3.

## Diocese of Bath and Wells—*continued.*

| Sections. | *Exceptional Cases.* | £. | s. | d. |
|---|---|---|---|---|
| | Where there are two glebe houses in one and the same incumbency, one of which is occupied as a farmhouse or cottage, the same should not be dealt with as a glebe house, but treated as a farm building, and be covered by the charge for farm buildings. | | | |
| | Farm buildings, including cottages, but no incumbent's house - | 3 | 3 | – |
| | Farm buildings, including cottages and chancel, but no incumbent's house. | 4 | 4 | – |

*Note.*—The foregoing charges, which are subject to revision and alteration, as mentioned in Section 10, are to include travelling expenses and all other disbursements.

*Arthur C. Bath & Well.*

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Fees to be paid to the Bishop's Secretary and Registrar for Work done in pursuance of the Act fixed at a Meeting, convened under Section 10, and held at Highbridge, in the said Diocese, on the 12th day of September 1871, and continued by adjournment on the 15th day of November 1871.

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### Bishop's Secretary.

| | £. | s. | d. |
|---|---|---|---|
| For all work required to be done by him under Sections 12, 13, 16, 23, 29, 32, 34, and 35, where the report of the surveyor is uncontested or not objected to - - - - - - - - - - - - - - | 1 | 5 | – |
| If the report be objected to, then in addition to the foregoing fees, and also if the certificate of the surveyor, under Section 57, shall be objected to, the secretary shall be entitled to make, and shall be paid in each case, the usual professional charges for advising, and correspondence, with the persons interested in, or affected by, such report and certificate respectively; for preparing directions for a second report or certificate (as the case may be), to be made by another surveyor; for drawing and laying case before counsel on any question of law, including fees to counsel and clerk and agent's charges; but no fee to be charged for attendance on the bishop. | | | |
| Such professional charges not to exceed the following scale:— | | | |
| £. s. d. | | | |
| For every attendance - - - - - - - - - 6 8 | | | |
| For every letter - - - - - - - - - - 3 6 | | | |
| For preparing any other document, 1*s.* per folio of 72 words, and 4*d.* per folio for making fair copies thereof. | | | |
| Preparing order for sequestration under Act, obtaining bishop's signature thereto, and forwarding the same to the registrar - - - - | – | 5 | – |
| For obtaining bishop's consent to loan under Sections 17, 28, and 49 - | In every instance 2*s.* 6*d.* | | |
| For obtaining bishop's allowance or postponement of time under Sections 22, 41, and 52 - - - - - - - - - - - - - | | | |
| For obtaining bishop's sanction to rebuilding, remodelling, or removal of buildings or premises under Sections 42, 50, and 71 - - - - - | | | |
| For obtaining bishop's signature or counter-signature under Sections 44, 45, and 57 - - - - - - - - - - - - - - | | | |
| For forwarding or transmitting certificates under Sections 50 and 57 - | | | |

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### Registrar.

| | £. | s. | d. |
|---|---|---|---|
| For preparing and executing every sequestration under Sections 22, 43, and 57, and obtaining the seal of the chancellor thereto, and preparing sequestration bond, and obtaining the signatures of the sequestrator, and his sureties thereto (exclusive of Stamp Duty, but inclusive of mandatory's fee for journey to the parish to publish, &c.) - - - - - | 4 | 14 | 6 |
| For filing and registering every certificate under Sections 27, 46, 50, and 57, including sending the duplicate thereof when not made by registrar - | – | 5 | – |
| For registering every order under Section 35 - - - - - - - - | – | 5 | – |
| For making and sending every copy, order, or certificate required to be made and sent by the registrar, for every folio of 72 words - - - | – | – | 4 |

*Note.*—The foregoing fees are subject to revision and alteration as mentioned in Section 10, and the secretary's fees are inclusive of all charges for correspondence and attendances, but exclusive of all disbursements, except postage and stationery.

*Arthur C. Bath & Well.*

## DIOCESE OF CARLISLE.

### Ecclesiastical Dilapidations Act, 1872.

### Scale of Surveyor's Fees.

| Sections of the Ac. | | £. | s. | d. |
|---|---|---|---|---|
| 12, 15, 29, 31, 57. | First survey and report or certificate | 3 | 3 | – |
| | If not exceeding half a day | 2 | 2 | – |
| | Each half-day after the first day required to complete the survey | 1 | 11 | 6 |
| 22. | Each inspection and report | 2 | 2 | – |
| 44. | Each certificate | – | 10 | 6 |
| 46. | Final certificate for completion of works | 1 | 1 | – |
| 45. | Specification, drawings, and contracts under this clause, including inspections and certificates of completion, 5 per cent. on amount of outlay. | | | |
| 50, 51. | Special certificate | 1 | 1 | – |
| 52. | Ditto - ditto | – | 10 | 6 |
| 58, 59. | For inspecting, if directed so to do, and for perusing counterpart of lease | 1 | 1 | – |
| 70, 71. | For advising the bishop under either of these sections | 1 | 1 | – |
| | For every visit reasonable travelling expenses. | | | |
| | Where stamps are required the cost of them to be an additional charge. | | | |

*Note.*—The above to include one copy of each report or certificate. Duplicates and triplicates to be charged 4 *d.* per folio additional.

| Registrar. | £. | s. | d. |
|---|---|---|---|
| For every order or certificate filed on registry | – | 2 | 6 |
| For copy of order sent to Queen Anne's Bounty Office | – | 5 | – |
| Bishop's order on triplicate | – | 15 | – |

| Secretary. | | | |
|---|---|---|---|
| For every order issued | – | 5 | – |
| For every copy of order | – | 2 | 6 |

## DIOCESE OF CHICHESTER.

### Ecclesiastical Dilapidations Act, 1871.

Scale of the Rate of Charges to be paid to the Surveyor, and of the Fees to be paid to the Bishop's Secretary and Registrar, fixed at a Meeting convened for that purpose, at Chichester, 4th December 1874.

### Rate of Charges to the Surveyor.

| Sections. | | £. | s. | d. |
|---|---|---|---|---|
| 12 to 15, on complaint and at request. | For inspection, with report as required by the Act, and one copy— | | | |
| 29 to 31 on vacancy. | (*a.*) When no repairs are found necessary, including certificate | 3 | 3 | – |
| 21, benefice under sequestration becoming vacant before repairs completed. | (*b.*) When repairs are necessary, 3 *l.* 3 *s.*, and 2½ per cent. on cost of repairs, but in no case less than 1 *l.* 1 *s.* | 3 | 3 | – |
| | | 2½ per cent. | | |
| | In cases of vacancy or sequestration additional copy of report | – | 10 | 6 |
| | *Note.*—Works needed must be specified in the report sufficiently in detail to enable a builder to contract for the work, or to enable an architect to draw specifications for competition. | | | |

Appendix, No. 3.

## DIOCESE OF CHICHESTER—*continued.*

### RATE of Charges to the Surveyor—*continued.*

| Sections. | | £. s. d. |
|---|---|---|
| 22. | For inspection and report | 3 3 – |
| 44, 46, and 51, certificates. | For each visit to inspect repairs during their execution, or at completion, including certificates— | |
| | (*a.*) When the amount is under 20 *l.* | 1 11 6 |
| | (*b.*) When the certificate or cost of repairs exceeds 20 *l.*, add 1¼ per cent. on excess | 1 11 6 and 1¼ per cent. |
| | When the per-centage exceeds 2 *l.* 2 *s.*, no charge is to be made for a second visit and certificate on account, nor when it exceeds 4 *l.* 4 *s.* for a third visit and certificate. | |
| | For each visit at which, owing to the repairs being incomplete or unsatisfactory, a certificate cannot be given* | 1 11 6 |
| | * *Note.*—It is advisable that, in making a contract with a builder, the incumbent should have power to deduct this charge, if incurred, from any sum that may become due to the builder from him. | |
| 45, sequestration and neglect to repair. | For inspection, report, and specification, as Sections 12 and 15 | — — |
| | For contract, superintendence, and certificate, 2½ per cent. on total outlay, and legal (if any) and travelling expenses. | — |
| 50. | For special certificate in triplicate | 3 3 – |
| 52. | For certificate for postponement— | |
| | (*a.*) Without visit | 1 1 – |
| | (*b.*) If visit is needed | 3 3 – |
| 57. | As Sections 12 to 15, and as Sections 44, 46, 51, the per-centage being taken only on sum required in addition to the insurance money. If the incumbent shall refuse or neglect to re-instate, then as Section 45. | |
| | Travelling expenses in all cases to be included (except where otherwise provided for in the above scale). | |

### SCALE of FEES to the REGISTRAR.

| | | |
|---|---|---|
| 23, 43, 57. | Fees for sequestration (exclusive of stamps) | 2 2 – |
| 27. | Filing certificate of surveyor | – 5 – |
| 27. | Duplicate ditto to be sent to the dignitary concerned | – 5 – |
| 35. | The like of bishop's order | – 5 – |
| 35. | Copy of certificate to be sent to Governors | – 5 – |
| 46. | Filing certificate of completion | – 5 – |
| 50. | The like | – 5 – |
| 55. | Fee on exhibiting receipt and notice | – 5 – |
| 57. | Filing insurance certificate | – 5 – |

### FEES to the SECRETARY.

| | | |
|---|---|---|
| 34. | For a letter | – 5 – |
| | Each copy of the order to new incumbent and executors of late incumbent. | – 5 – |

Surveyor of Ecclesiastical Dilapidations:—Mr. Lacy W. Ridge, Architect, of 23, Bedford-row, London (re-appointed for five years, from the 21st October 1874).

### ESTIMATED AMOUNT of CHARGES and FEES in three ordinary Cases.

CASE I.—Inspection directed by the Bishop on complaint, or at the request of the Incumbent.

Sections 12, 15, 44, 46.

| | Repairs Costing 20 *l.* | Repairs Costing 60 *l.* | Repairs Costing 300 *l.* |
|---|---|---|---|
| | £. s. d. | £. s. d. | £. s. d. |
| Inspection and report | 3 3 – | 3 3 – | 3 3 – |
| 2½ per cent. | 1 1 – | 1 10 – | 7 10 – |
| Inspections and certificates | *1 11 6 | *1 11 6 | †1 11 6 |
| 1¼ per cent. over 20 *l.* | – – – | – 10 – | 3 10 – |
| Registrar's and secretary's fees | – 10 – | – 10 – | – 10 – |
| TOTAL £. | 6 5 6 | 7 4 – | 16 4 6 |

* If only one visit.

† If only two visits.

DIOCESE OF CHICHESTER—*continued.*

CASE II.—Inspection on vacancy of Benefice.

Sections 29, 30, 31, 44, 46.

In addition to the charges estimated in Case I., there will be (Section 30) a fee of 10 *s.* 6 *d.* to the surveyor for copy of report.

CASE III.—Inspection at the request of the Incumbent, but where no repairs are found necessary.

Section 12.

| | £. | s. | d. |
|---|---|---|---|
| Surveyor—Inspection, with report and certificate | 3 | 3 | – |
| Registrar, &c. | – | 10 | – |
| TOTAL £. | 3 | 13 | – |

## DIOCESE OF CHESTER.

### ECCLESIASTICAL DILAPIDATIONS ACT, 1871.

### FEES and CHARGES of SURVEYOR.

The FEES payable to the DIOCESAN SURVEYOR, which are to cover all his Expenses, are to be the following:—

| Sections of the Act. | | £. | s. | d. |
|---|---|---|---|---|
| 12 to 15, 29 to 31. | For work required together with one copy of report: | | | |
| | Benefice not exceeding 100 *l.* a year | 2 | 2 | – |
| | Above 100 *l.* and not exceeding 300 *l.* a year | 3 | 3 | – |
| | „ 300 *l.* „ 400 *l.* „ | 4 | 4 | – |
| | „ 400 *l.* „ 500 *l.* „ | 5 | 5 | – |
| | „ 500 *l.* „ 600 *l.* „ | 6 | 6 | – |
| | „ 600 *l.* „ 700 *l.* „ | 7 | 7 | – |
| | „ 700 *l.* and upwards | 8 | 8 | – |
| | *Note.*—For all purposes of this table of fees the value of each benefice shall be taken at the value assessed by the Ecclesiastical Commissioners for stamp duty, when so assessed, where there is a vacancy, according to the certificate of the Commissioners, on the next presentation or appointment, and in all other cases on the presentation or appointment of the then incumbent. | | | |
| | For every other copy of report and for sending same | – | 5 | – |
| 22. | For each inspection and report | 2 | 2 | – |
| 44. | For each certificate | – | 10 | 6 |
| 45. | For certificates required and for executing work here provided, 5 per cent. on outlay | | | |
| 46, 50, 51, 52, and 57. | For certificate, survey, and making and sending copies: | | | |
| | Benefice not exceeding 400 *l.* a year | 1 | 1 | – |
| | Above 400 *l.* but not exceeding 600 *l.* | 1 | 11 | 6 |
| | „ 600 *l.* and upwards | 2 | 2 | – |
| 54. | For valuing for insurance (if employed) | 1 | 1 | – |
| 58 and 59. | For inspecting under Section 58, if directed so to do, and for perusing counterpart of lease under 59 (where necessary) | 2 | 2 | – |
| 59. | For perusing counterpart of lease where no inspection | – | 10 | 6 |
| 70 and 71. | For advising the bishop as to consent, if employed | 2 | 2 | – |

Appendix, No. 3.

DIOCESE OF CHESTER—*continued.*

## REGISTRAR'S and SECRETARY'S FEES.

### FEES to SECRETARY, to include all Expenses.

| Sections of Act. | | £. | s. | d. |
|---|---|---|---|---|
| 12, 13, 16, 22, 29, 34, 35, 44, 45, and 57. | For direction for survey, perusing report, final order and copies, and sending same, and counter-signature of all necessary certificates: | | | |
| | Benefice not exceeding 100 *l.* a year | – | 10 | 6 |
| | „ above 100 *l.* but not exceeding 300 *l.* | 1 | 1 | – |
| | „ „ 300 *l.* „ 500 *l.* | 1 | 11 | 6 |
| | „ „ 500 *l.* „ 700 *l.* | 2 | 2 | – |
| | „ „ 700 *l.* and upwards | 2 | 12 | 6 |
| | *Note.*—For all purposes of this table of fees the value of each benefice shall be taken at the value assessed by the Ecclesiastical Commissioners for stamp duty, when so assessed, where there is a vacancy, according to the certificate of the Commissioners, on the next presentation or appointment, and in all other cases on the presentation or appointment of the then incumbent. | | | |
| 16 and 32. | Perusing and considering objections | – | 10 | 6 |
| | Direction for second report, and considering report | – | 10 | 6 |
| | The expenses under Sections 16 and 32 are to be paid by the party objecting. | | | |
| 17, 21, 38, 42, 49, 50, 63, and 70. | For every consent under these sections | – | 10 | 6 |
| 19, 22, 41, and 52. | Every direction or order as to allowance of extended time | – | 10 | 6 |
| 23, 43, and 57. | Order for sequestration | 1 | 1 | – |
| 71. | Authority for removal, &c. | 1 | 1 | – |
| | For preparing case for counsel, and taking opinion thereon, the usual professional charges. | | | |

### FEES to the REGISTRAR.

| | | | | |
|---|---|---|---|---|
| | For filing each document required to be filed in the registry under the Act | – | 5 | – |
| | For each copy of document required to be filed | – | 5 | – |
| | In case of any benefice under the annual value of 200 *l.*, only half the above fees. | | | |
| | In cases of sequestration, the usual fees now charged. | | | |

## DIOCESE OF ST. DAVID'S.

### Ecclesiastical Dilapidations Act, 1871.

Scale of Charges to be made by the Diocesan Surveyor for Work done in pursuance of the Act, fixed in compliance with Section 10 of the Act.

| Sections of Act. | | £. s. d. |
|---|---|---|
| 12, 13, 14, 15, 19. | For every inspection and report (one copy) of such inspection - | 2 12 6 |
| 29 to 31. | For two other copies of report and sending same, per folio of 72 words - - - - - - - - - - - - | – – 2 |
| | *N.B.*—This report shall include the result of the inspection of all the several buildings, fences, &c., belonging to a benefice. | |
| 22. | Inspection and report under this Section - - - - - - | 2 2 – |
| 44. | Certificate of sum to be paid by Governors from time to time on account of works :— | |
| | If a journey is not necessary - - - - - - - - | – 5 – |
| | If a journey is necessary - - - - - - - - | 2 2 – |
| 45. | Where repairs are executed according to a specification and contract prepared by surveyor, and under his direction :— | |
| | On outlay (1.) not exceeding 10*l.* - - - 10*l.* per cent. | |
| | „ (2.) exceeding 10*l.* and not exceeding 20*l.* - - - - $7\frac{1}{2}$ „ | |
| | „ (3.) exceeding 20*l.* and not exceeding 50*l.* - - - - 5 „ | |
| | „ (4.) exceeding 50*l.* and not exceeding 150*l.* - - - - 4 „ | |
| | „ (5.) exceeding 150*l.* - - - 3 „ | |
| | In this case no fees for certificates or for anything (except travelling expenses) will be allowed. | |
| 46. | Final inspection and certificate (in triplicate) of repairs completed - | 1 11 6 |
| 50, 51, 52, 57. | Special certificate in each case, with estimate when necessary, or certificates in triplicate :— | |
| | If journey is necessary - - - - - - - - - - | 2 2 – |
| 57. | If journey is not necessary - - - - - - - - | – 3 4 |
| 58. | For work required under this Section in each case - - - | 2 2 – |

The Surveyor may charge travelling expenses actually incurred, by rail 2nd class fare, and hotel expenses not exceeding 10*s.* per diem, and for help required in inspection a sum not exceeding 5*s.* If two or more inspections can be made in the same journey, travelling and hotel expenses are to be apportioned.

The word "inspection" in each case covers all the buildings (including chancel), fences, &c., belonging to a benefice and situate *within the parish.* In the case of buildings, fences, &c., belonging to the benefice, but situate *without the parish,* needing inspection, if such dilapidations can be inspected on the same day with the parsonage, &c., only travelling expenses shall be allowed; if not, the charge shall be for each half day employed in such inspection, 1 *l.* 1 *s.*

*N.B.*—A centre for each Archdeaconry whence travelling expenses are to be counted, viz. :—

Haverfordwest, for the Archdeaconry of St. David's.
Haverfordwest, or Lampeter, for the Archdeaconry of Cardigan.
Carmarthen, for the Archdeaconry of Carmarthen.
Brecon, for the Archdeaconry of Brecon.

Appendix, No. 3.

DIOCESE OF ST. DAVID'S—*continued.*

FEES to be paid to the BISHOP'S SECRETARY and REGISTRAR, for Work done in pursuance of the Act, fixed in compliance with Section 10 of the Act.

| Sections. | | SECRETARY. | REGISTRAR. |
|---|---|---|---|
| | | £. s. d. | £. s. d. |
| 8 and 9. | On appointment of surveyor :— | | |
| | For correspondence and notices on convening meeting. | 1 1 – | — |
| | For preparation and completion of appointment, exclusive of stamp duty. | 2 2 – | — |
| | For registering appointment - - - - - | - - - | 8 *d.* per folio of 72 words. |
| 10. | For registering rate of charges and scale of fees, and any alteration on revision thereof. | - - - | The like. |
| 66. | For filing resignation of surveyor - - - - | - - - | – 5 – |
| | The following fees are to be paid by the clergy :— | | |
| 12, 14, 16, 22. | On an inspection report and order :— | | |
| | In uncontested cases :— | | |
| | (*a.*) On complaint :— | | |
| | For perusal of complaint; making and sending copies of complaint to incumbent or sequestrator; direction to inspect; perusal and entry of surveyor's report; attendances on the bishop; and correspondence relating to the matter. | 1 11 6 | — |
| | (*b.*) On request of incumbent :— | | |
| | For direction to inspect; perusal and entry of surveyor's report; attendances on the bishop; and correspondence relating to the matter. | 1 1 – | — |
| | On filing report - - - - - - | - - - | – 5 – |
| | In contested cases :— | | |
| | For perusal of objections to report; attendances and correspondence relating thereto. | 1 1 – | — |
| | On direction for second report and correspondence with surveyor named therein. | – 10 6 | — |
| | On taking opinion of counsel - - - - | Usual professional charges. | — |
| | On obtaining the bishop's decision and filing report as modified thereby. | – 10 6 | — |
| | On filing report - - - - - - - | - - - | – 5 – |
| 13. | On an inspection of benefice under sequestration; report and order thereon :— | | |
| | In uncontested cases :— | | |
| | Direction to inspect; perusal and entry of report; attendance and correspondence. | 1 1 – | — |
| | In contested cases :— | | |
| | The like fees as on inspection on a complaint. | | |
| | On filing final report - - - - - - | - - - | – 5 – |

DIOCESE OF ST. DAVID'S—*continued.* Appendix, No. 3.

FEES to be paid to the Bishop's Secretary and Registrar, &c.—*continued.*

| Sections. | | SECRETARY. £. s. d. | REGISTRAR. £. s. d. |
|---|---|---|---|
| 29, 35. | On an inspection report and order in cases of vacancies:— | | |
| | In uncontested cases: | | |
| | On direction to inspect and report; perusal and entry of report and surveyors' certificates; preparation of order; triplicate copies and transmission thereof; attendances and correspondence relating thereto. | 1 11 6 | — |
| | In contested cases:— | | |
| | The like fees as in contested cases on a complaint or request. | | |
| | On filing order - - - - - - - | - - - | - 5 - |
| | Copy thereof, collating and transmission - | - - - | 8 *d.* per folio of 72 words. |
| 23 and 43. | On a sequestration of profits of benefice: | | |
| | For the bishop's fiat - - - - - - - | - 10 6 | — |
| | For sequestration - - - - - - - | - - - | Usual registry charges. |
| 27. | On filing certificate of execution of works: | | |
| | Collating duplicate and service thereof - - | - - - | - 10 - |
| 17, 38, 49. | On obtaining bishop's consent to loan to incumbent, including correspondence and attendances. | - 10 6 | — |
| 19, 41, 52. | On obtaining bishop's order for extension of time for execution of repairs (Section 19); on enlargement of period of payment (Section 41) or postponement of works (Section 52). | - 10 6 | — |
| 21, 42, 50. | On obtaining bishop's consent for repairs to be deferred (Section 21), or to rebuilding (Section 42), or for alterations and remodelling in lieu of repairs (Section 50). | - 10 6 | — |
| 44, 45. | On obtaining bishop's counter-signature of surveyor's certificate. | - 5 - | — |
| 46, 52, 57. | On filing certificate of surveyor of completion of works (Section 46), or as to postponement of works (Section 52), or as to monies required (Section 57). | - - - | - 5 - |
| 57. | On proceedings under Section 57, the same fees as on proceedings on a complaint. | | |
| 70. | On obtaining consent of the bishop to non-liability of incumbent in respect of buildings pulled down, for which other buildings have been substituted; including attendances; examination of papers and plans and correspondence relating thereto. | 2 2 - | — |
| 71. | For the bishop's authority upon application of incumbent, with consent of patron, for removal of buildings and application of proceeds; including perusal of application and consent; attendances and correspondence. | 1 1 - | — |

Appendix, No. 3.

# DIOCESE OF ELY.

## Ecclesiastical Dilapidations Act, 1871.

### Fees for the Registrar of the Diocese.

Five shillings for duties performed under each of the following Sections: 27, 35, 46, 50, 57; except as to fees in respect of sequestrations, which fees are to be the same as those now charged for sequestrations by the registrar of the diocese.

### Fees for the Bishop's Secretary.

A fee of not less than 5 *s.* and not more than 10 *s.* for work, if any, done under any one of the following Sections, viz., 12, 13, 16, 17, 19, 22, 29, 32, 34, 35, 38, 41, 44, 49, 50, 52, 57, 63, 70, 71.

The fees for sequestration under Sections 23, 43, 45, 57, to be the same as those now charged for sequestrations by the bishop's secretary.

Where counsel's opinion is taken under Sections 16 and 32, the secretary shall, if a solicitor, be entitled to make the usual professional charges.

Copies of order under Section 35, and sending the same, to be charged 4 *d.* per folio.

### Table of Fees for Surveyors.

| Sections of the Act. | | £. | *s.* | *d.* |
|---|---|---|---|---|
| 12–15, 29–31 | Work done, and one copy of report | 3 | 3 | – |
| | Other copies, and sending the same, per folio | – | – | 3 |
| 22 | Work done; each inspection, together with report and one copy | 2 | 2 | – |
| 44 | Certificate | – | 10 | 6 |
| 45 | Duties, including original and all subsequent inspections and all certificates, 5 per cent. on the amount, provided that no in case the total fee under this section be less than | 3 | 3 | – |
| 46 | Certificate, and making and sending copies | 1 | 1 | – |
| 50 and 51 | Work done | 1 | 1 | – |
| 52 | Ditto | 1 | 1 | – |
| 57 | Ditto | 3 | 3 | – |
| 58 and 59 | For inspecting under 58, if directed so to do, and for perusing counterpart of lease under 59 | 1 | 1 | – |

Out of pocket travelling expenses to be paid in addition to the above fees. Such expenses to be calculated from Cambridge to all places in the county of Cambridge and the Isle of Ely; from Huntingdon to all places in the county of Huntingdon; from Bedford to all places in the county of Bedford; and from Bury St. Edmund's to all places in the county of Suffolk.

## DIOCESE OF EXETER.

### Ecclesiastical Dilapidations Act, 1871.

### Rate of Surveyor's Charges.

I. Inspecting the buildings of a benefice, pursuant to the bishop's direction:

For every day during which the surveyor shall be necessarily and actually engaged out of his office, 3 *l.* 3*s.*

But where the surveyor shall be necessarily and actually engaged out of his office not exceeding five hours in any one day, he shall be entitled to charge one guinea and a half only for the whole time so employed.

The above fees will include and cover all travelling and other expenses (if any) incurred by the surveyor.

The surveyor will in no case be entitled to charge more than six guineas for any inspection, however long he may be engaged, unless a further charge be, under the special circumstances of any case, allowed by the archdeacon, with the approval of the bishop, such further charge not to exceed the rate aforesaid.

For preparing report to the bishop, in relation to such inspection, specifying all the particulars required by the Act, the details to extend to all such particulars as may be necessary for enabling the incumbent to execute the repairs,—

| | £. | *s.* | *d.* |
|---|---|---|---|
| If repairs needed - - - - - - - - - - - | 1 | 1 | – |
| If no repairs needed - - - - - - - - - - - | – | 10 | 6 |

II. For preparing the requisite plans, specifications, and contract, in relation to repairs to be executed in the case of a benefice under sequestration, or the repairs to be executed in the case of the refusal or neglect of an incumbent to execute the same (including rebuilding or repairing in case of fire), and directing the execution of such repairs, and certifying from time to time the amount to be paid to the builder or contractor executing such repairs, and giving certificate of completion of such repairs when finished, and preparing advertisements, if necessary:—

Where there has been a preliminary inspection and report by the direction of the bishop,—

£. 3 per cent on the contract price of such repairs.

Where there has been no such preliminary inspection and report,—

£. 5 per cent. on the contract price of such repairs.

And in addition thereto, the surveyor shall be entitled to the travelling expenses, reasonably and actually, paid by him; but in no case to exceed on any one journey 1 *s.* per mile, one way. Second class railway fare only will be allowed.

He shall also be entitled to the amount actually paid by him for advertisements.

And where the circumstances are such as in the opinion of the surveyor to require the employment of a clerk of the works, and the archdeacon shall consent thereto by writing under his hand, to be countersigned by the bishop, the surveyor shall also be entitled to the amount reasonably and actually paid to such clerk for his services, not exceeding in any case 2 *l.* per week; but no clerk of the works shall be employed without seven days' previous notice in writing by the surveyor to the incumbent or sequestrator.

III. For every inspection of the buildings of a benefice necessarily and actually made for the purpose of giving any certificate pursuant to the Act (except in the case of repairs executed under the direction of the surveyor), including the preparation of such certificate,—

(*a.*) Where there has been a preliminary inspection and report by the direction of the bishop,—

One-half the charges above allowed in the case of an inspection by the direction of the bishop.

(*b.*) But where there has been no such preliminary inspection and report,—

The same charges as in the case of an inspection by direction of the bishop.

*N.B.*—The preparation of the certificate is covered by the fee for inspection, and no separate fee will be allowed for it.

Where the surveyor on a preliminary inspection reports to the bishop that no repairs are needed, and is thereupon required to give a certificate of completion, pursuant to Section 46, he shall not be entitled to any further charge for inspection for the purpose of giving such certificate, and in that case the charge for giving such certificate shall be considered as included in the fee for preparing report to the bishop, and no additional charge shall be allowed for it.

IV. For every certificate given by the surveyor pursuant to the Act, where inspection of the buildings shall not be specially had for the purpose of making the same (except where

Appendix No. 3.

DIOCESE OF EXETER—*continued.*

the certificate is covered by the fees above allowed, and except the certificate to the bishop mentioned in the next clause), 10 *s.*

V. For making and sending every copy of a report, including, when necessary, the certifying to the bishop when, to whom, and in what manner, copy sent, 2*s.* 6*d.*

VI. For making and delivering every copy of a certificate, 2*s.* 6 *d.*

FEES of BISHOP'S SECRETARY.

| | £. | *s.* | *d.* |
|---|---|---|---|
| 1. Making copy complaint and forwarding same (with notice) to incumbent or sequestrator. | – | 2 | 6 |
| 2. Bishop's direction to surveyor to inspect | – | 2 | 6 |
| 3. Bishop's consent, under Sections 50 and 52 | – | 3 | 6 |
| 4. Counsel's opinion— | | | |
| Instructions for case | – | 6 | 8 |
| Drawing same, per folio of 72 words | – | 1 | – |
| Fair copy for counsel, per folio of 72 words | – | – | 4 |
| Attending counsel with and for case | – | 6 | 8 |
| Fee to counsel and clerk as paid. | | | |
| 5. Drawing up order by bishop, stating the repairs and their cost for which the late incumbent of a benefice, his executors or administraters, is or are liable. | – | 6 | 8 |
| 6. Making and sending each copy thereof, pursuant to the Act | – | 3 | 6 |
| 7. Authority to remove buildings, commission, and correspondence | – | 13 | 4 |
| 8. Sequestration— | | | |
| Instructions | – | 3 | 4 |
| Drawing and engrossing instrument of sequestration, 1*s.* 4*d.* per folio of 72 words. | | | |
| Signing and sealing | – | 3 | 4 |
| Copies for publication, 4 *d.* per folio of 72 words. | | | |
| Publication and certificate | 1 | 1 | – |
| Expenses—as paid. | | | |

FEES of BISHOP'S REGISTRAR.

| | £. | *s.* | *d.* |
|---|---|---|---|
| 1. Registering every order, certificate, or consent | – | 2 | 6 |
| 2. Making and sending every copy order required to be made and sent by the registrar. | – | 3 | 6 |
| 3. Registering authority to remove buildings | – | 2 | 6 |
| 4. Sequestration | – | 10 | – |

## DIOCESE OF GLOUCESTER AND BRISTOL.

ECCLESIASTICAL DILAPIDATIONS ACT, 1871.

CHARGES of SURVEYOR.

| | £. | *s.* | *d.* |
|---|---|---|---|
| 1. That the payment of the surveyor for inspection be, at least for the first year, at a certain rate per diem. | | | |
| 2. That the time of payment be— | | | |
| For each whole day | 2 | 2 | – |
| For each half day | 1 | 1 | – |
| That necessary expenses actually out of pocket be allowed, including reasonable travelling charges within the limits of the diocese. | | | |
| 3. That the charge for the reports (required in Sections 14, 15, 30, and 31), be in each case. | 1 | 1 | – |
| For every copy thereof, per folio | – | – | 4 |
| For certifying in triplicate (Section 46) | – | 10 | – |
| Each certificate for Queen Anne's Bounty (Section 44) | – | 5 | – |

For specifications, drawings, and all works to be done under the direction of the surveyor in case of refusal or neglect, or of fire, or when the benefice is under sequestration, 5 per cent. on the cost.

23 October 1871.

DIOCESE OF GLOUCESTER AND BRISTOL—*continued.*

FEES payable to the BISHOP'S SECRETARY and REGISTRAR.

| SECRETARY. | £. | s. | d. |
|---|---|---|---|
| Notice and copy complaint to incumbent, Section 12 | – | 5 | – |
| For each direction by the bishop to survey, Section 12 | – | 5 | – |
| Bishop's decision, Section 16 | – | 10 | 6 |
| Bishop's order in triplicate, and sending out same, Section 35 | – | 10 | 6 |
| For each enlargement of time by bishop, Sections 19, 41, 42 | – | 5 | – |
| For each counter-signature by the bishop of surveyor's certificate, Sections 44, 45. | – | 5 | – |
| Authority by the bishop to remove building or consent to non-liability, Sections 70 and 71. | 1 | 1 | – |
| Taking opinion of counsel (ordinary charges of solicitor). | | | |

| REGISTRAR. | | | |
|---|---|---|---|
| Registering each document uner eight folios | – | 5 | – |
| For each folio after | – | – | 4 |
| Charges in relation to mortgages and sequestrations as at present. | | | |

(signed) *T. Thorp,* Archdeacon of Bristol.
23 October 1871. *G. Prevost,* Archdeacon of Gloucester.

## DIOCESE OF HEREFORD.

ECCLESIASTICAL DILAPIDATIONS ACT, 1871.

REVISED RATE of CHARGES to be paid to the SURVEYOR, fixed at a Meeting convened under Section 10, 8th January 1874.

| Sections. | | £. | s. | d. |
|---|---|---|---|---|
| | First survey and report or certificate | 4 | 4 | – |
| 12—15 | Exception.—When the time used for the survey, including travelling, does not exceed half a day. | 2 | 12 | 6 |
| 29—31 | Each day, after the first, required to complete the survey | 2 | 2 | – |
| 50, 51, 57 | Exception.—When the time, after the first day, does not exceed half a day. | 1 | 1 | – |
| | Each additional copy of the report | – | – | 4 per folio. |
| | Each inspection of the works | 2 | 2 | – |
| 22, 44, 46 | Exception.—When the time used, including travelling, does not exceed half a day. | 1 | 1 | – |
| 22, 44 | Each certificate | – | 2 | 6 |
| 46 | Final certificate in triplicate | – | 5 | – |
| 50 | Certificates in triplicate | – | 5 | – |
| 45 | Specification drawings, and contracts, required under this clause, including inspections and certificates. | 5 per cent. on the amount of outlay. | | |
| 52 | Special certificate | – | 10 | 6 |
| | For every visit, reasonable travelling expenses. The amount paid to labourers and artisans to be also added. | | | |

*J. Hereford,* Chairman.

8 January 1874.

Appendix, No. 3.

## DIOCESE OF HEREFORD—*continued.*

FEES to be paid to the BISHOP'S SECRETARY and REGISTRAR, for Work done in pursuance of the Act, fixed in compliance with Section 10 of the Act.

| Sections. | | SECRETARY. £. s. d. | REGISTRAR. £. s. d. |
|---|---|---|---|
| 8 and 9 | On appointment of surveyor: | | |
| | For correspondence and notices of convening meeting. | 1 1 – | |
| | For preparation and completion of appointment, exclusive of stamp duty. | 2 2 – | |
| | For registering appointment - - - - | - - | 8 *d.* per folio of 72 words. |
| 10 | For registering rate of charge and scale of fees, and any alteration on revision thereof. | - - | The like. |
| 66 | For filing resignation of surveyor - - - - | - - | – 5 – |
| | The following Fees are to be paid by the Clergy: | | |
| 12, 14, 16, 22 | On an inspection report and order: | | |
| | In uncontested cases: | | |
| | (*a.*) On complaint: | | |
| | For perusal of complaint; making and sending copies of complaint to incumbent or sequestrator; direction to inspect; perusal and entry of surveyor's report; attendances on the bishop, and correspondence relating to the matter. | 1 11 6 | |
| | (*b.*) On request of incumbent: | | |
| | For direction to inspect; perusal and entry of surveyor's report; attendances on the bishop; and correspondence relating to the matter. | 1 1 – | |
| | On filing report - - - - - - - - | - - | – 5 – |
| | In contested cases: | | |
| | For perusal of objections to report; attendances and correspondence relating thereto. | 1 1 – | |
| | On direction for second report and correspondence with surveyor named therein. | – 10 6 | |
| | On taking opinion of counsel - - - - | Usual professional charges. | |
| | On obtaining the bishop's decision and filing report as modified thereby. | – 10 6 | |
| | On filing report - - - - - - - - | - - | 5 – |
| 13 | On an inspection of benefice under sequestration; report and order thereon: | | |
| | In uncontested cases: | | |
| | Direction to inspect; perusal and entry of report; attendance and correspondence. | 1 1 – | |
| | In contested cases: | | |
| | The like fees as on inspection on a complaint. | | |
| | On filing final report - - - - - - | - - | – 5 – |
| 29, 35 | On an inspection report and order in cases of vacancies: | | |
| | In uncontested cases: | | |
| | On direction to inspect and report; perusal and entry of report and surveyor's certificates; preparation of order; triplicate copies and transmission thereof; attendances and correspondence relating thereto. | 1 11 6 | |
| | In contested cases: | | |
| | The like fees as in contested cases on a complaint or request. | | |
| | On filing order - - - - - - - - | - - | – 5 – |
| | Copy thereof, collating and transmission - - | - - | 8 *d.* per folio of 72 words. |
| 23 and 43 | On a sequestration of profits of benefice: | | |
| | For the bishop's fiat - - - - - - | – 10 6 | |
| | For sequestration - - - - - - - | - - | Usual registry charges. |

Appendix, No. 3.

DIOCESE OF HEREFORD—FEES to be paid to Bishop's Secretary and Registrar, &c.—*continued.*

| Sections. | | Secretary. £. s. d. | Registrar. £. s. d. |
|---|---|---|---|
| 27 | On filing certificate of execution of works: Collating duplicate and service thereof - - | - - | - 10 - |
| 17, 38, 49 | On obtaining bishop's consent to loan to incumbent, including correspondence and attendances. | - 10 6 | |
| 19, 41, 52 | On obtaining bishop's order for extension of time for execution of repairs (Sec. 19); on enlargement of period of payment (Sec. 41) or postponement of works (Sec. 52). | - 10 6 | |
| 21, 42, 50 | On obtaining bishop's consent for repairs to be deferred (Sec. 21), or to rebuilding (Sec. 42), or for alterations and remodelling in lieu of repairs (Sec. 50). | - 10 6 | |
| 44, 45 | On obtaining bishop's counter-signature of surveyor's certificate. | - 5 - | |
| 46, 52, 57 | On filing certificate of surveyor of completion of works (Sec. 46), or as to postponement of works (Sec. 52), or as to moneys required (Sec. 57). | - - | - 5 - |
| 57 | On proceedings under Sec. 57, the same fees as on proceedings on a complaint. | | |
| 70 | On obtaining consent of the bishop to non-liability of incumbent in respect of buildings pulled down for which other building have been substituted; including attendances; examination of papers and plans, and correspondence relating thereto. | 2 2 - | |
| 71 | For the bishop's authority upon application of incumbent with consent of patron, for removal of buildings and application of proceeds, including perusal of application and consent; attendances and correspondence. | 1 1 - | |

## DIOCESE OF LICHFIELD.

### ECCLESIASTICAL DILAPIDATIONS ACT, 1871.

### SCALE of CHARGES of DIOCESAN SURVEYORS.

| Under Sections of the Act. | | |
|---|---|---|
| 14, 15, 29, 30, and 31. | Receipt of order to inspect; travelling to and from the specified buildings; making survey with necessary measurements, and notes, and drafting report. | At the rate of four guineas per day of eight hours. If this work occupies two days, seven guineas to be charged, including all travelling expenses. |
| | Bringing meausurements into shape for and making estimate, and other office work. | 1½ per cent. on amount of estimate. |
| | For every copy of report and estimate, beyond the three copies required by the Act; which are included in the office work. | 2 *s.* 6 *d.* to 5 *s.* |
| 46 - - | Inspection of works on completion, and certifying the same. | At the rate of four guineas per day of eight hours, as under Section 14, &c. |
| 22 - - | Receipt of order to inspect; travelling to and from the specified buildings; making inspection and report. | At the rate of four guineas per day of eight hours, as under Section 14, &c. |
| | Copies of report - - - - - - - - | 2 *s.* 6 *d.* each. |
| 44 - - | Receipt of order to inspect; travelling to and from the specified buildings; making inspection and issuing certificate. | At the rate of four guineas per day of eight hours, as under Section 22. |
| 45 - - | Superintendence of works, including all inspections, reports, examination of accounts, and issue of certificates. | 2½ per cent. on the cost, and travelling expenses. |
| 50 and 51. | (*a*) Receipt of order to prepare drawings, specification and estimate, and preparation of the same, and superintending the execution of works, including all services in connection therewith. | 5 per cent. on cost, and travelling expenses. |
| | (*b*) Receipt of order to inspect, travelling to and from the specified buildings; making inspection and special certificate. | At the rate of four guineas per day, as under Section 22. |
| | Copies of special certificate - - - - - | 2 *s.* 6 *d.* each. |
| | (*c*) As under Section 44 - - - - - - | Charge as under Section 44. |
| 57 - - | (*d*) As under Sections 14, 15, &c. - - - - | Charge as under Sections 14, 15, &c. |
| | (*e*) As under Sections 50, 51 (*a*) - - - - | Charge as under Sections 50, 51 (*a*). |

*Note.*—All correspondence and all attendances to be included in the above charges.

(True Copy.) (signed) *John Allen*,
(Signed) *Fred Thatcher.* Senior Archdeacon present at the Meeting, Chairman.

Appendix, No. 3.

DIOCESE OF LICHFIELD—*continued.*

REGISTRAR.

For duties performed under Sections 27, 35, 46, and 50, 5 *s.*
For filing any document under any other section of the Act than the above, 2 *s.* 6 *d.*

SECRETARY.

For the performance of all duties required of him by the Act—

| | £. | *s.* | *d.* |
|---|---|---|---|
| In unopposed cases | 1 | 1 | – |
| In contested cases | 1 | 11 | 6 |

No fee to be due to the registrar or other officer of the bishop or archdeacon under Section 55 of the Act.

## DIOCESE OF LINCOLN.

### ECCLESIASTICAL DILAPIDATIONS ACT, 1872.

SURVEYORS' FEES.

| Sections. | | £. | *s.* | *d.* |
|---|---|---|---|---|
| 12–15, 29–31, 57. | First survey and report or certificate | 3 | 3 | – |
| 12–15, 29–31, 57. | Each day after the first, required to complete the survey | 3 | 3 | – |
| | Exception: When the time after the first day does not exceed half a day | 1 | 11 | 6 |
| 22 | Each inspection two reports | 2 | 2 | – |
| 44 | Each visit, a certificate | – | 10 | 6 |
| 46 | For work under this section | 1 | 1 | – |
| 45 | Specification, drawings and contracts required under this clause, including inspections and certificates. | 5*l.* per cent. on the amount of outlay. | | |
| 50, 51 | – | 1 | 1 | – |
| 52 | Special certificate | 1 | 1 | – |
| 58, 59 | – | 1 | 1 | – |
| 70, 71 | – | 1 | 1 | – |

For every visit reasonable travelling expenses.
When stamps are necessary the cost of them to be an additional charge. The amount to be paid to labourers and artisans to be also added.
The above charges include one copy of each report. Duplicates and triplicates to be charged 4 *d.* per folio.

REGISTRAR'S FEES.

| | *s.* | *d.* |
|---|---|---|
| For every order or certificate filed in the Registry | 2 | 6 |
| For copy of order sent to the Governors of Queen Anne's Bounty | 5 | – |
| For every copy of a schedule to an order, or for copy of any document filed in the Registry under this Act, at the rate of 4 *d.* per folio of 72 words. | | |
| For every exhibitor of an insurance receipt at visitation, the sum of 6 *d.* | | |

SECRETARY'S FEES.

| | *s.* | *d.* |
|---|---|---|
| For every order issued | 5 | – |
| For every copy of an order | 2 | 6 |
| For every schedule to any order or other document, according to the length, at the rate of 4 *d.* per folio of 72 words. | | |

# DIOCESE OF LLANDAFF.

## Ecclesiastical Dilapidations Act, 1871.

At a meeting held 6th December 1871, pursuant to Section 10 of the "Ecclesiastical Dilapidations Act of 1871," for the purpose of fixing the rate of charges for the payment of the surveyor, bishop's secretary, and registrar in the Diocese of Llandaff, it was resolved:—

1. That the specification referred to in Section 15 shall be understood to mean such a specification in detail as would enable a builder to tender for the work to be done, if any be required.

2. That one fixed sum be paid for inspection of all dilapidations, whether at the incumbent's house of residence, or at a farm belonging to his benefice, and situated within the parish; and that this sum include all reports and specifications, and also certificates for the completion of the work and travelling expenses.

1. For work done under Sections 12 to 15, 29 to 31, 44 and 46—

| £. | £. | s. | d. | |
|---|---|---|---|---|
| On benefices under 100 per annum (net) - - - - - | 3 | 3 | – | Including net value of residence-house as rated to poor rate. |
| „ 200 „ - - - - - | 4 | 4 | – | |
| „ 300 „ - - - - - | 5 | 5 | – | |
| „ 400 „ - - - - - | 6 | 6 | – | |
| „ 500 „ - - - - - | 7 | 7 | – | |
| „ 600 „ - - - - - | 8 | 8 | – | |

*N.B.*—In all cases where the buildings are found in sufficient repair upon the first visit, a deduction of one guinea shall be made from the above scale of fees.

| | | | |
|---|---|---|---|
| 2. For each inspection and report under Section 22 - - - | 2 | 2 | – |
| 3. For certificates required and work done under Section 45, 5 per cent. on the outlay. | | | |
| 4. For each certificate under Sections 50, 51, 52, 57 (in triplicate when required) - - - - - - - - - - | 1 | 1 | – |
| 5. For work done under Sections 58, 59 - - - - - - | 1 | 1 | – |
| 6. For advising the bishop as to consent (if employed) under Sections 70, 71 - - - - - - - - - | 1 | 1 | – |
| 7. For a second inspection during the same incumbency after five years - - - - - - - - - - - | 2 | 2 | – |

When a survey of lands or houses situate not within the limits of the parish is required, which survey cannot by reason of distance be made on the same day as that of the buildings within the parish, the surveyor shall be entitled to 2*l.* 2*s.* per day for such survey.

## Fees of Bishop's Secretary.

| | s. | d. |
|---|---|---|
| 1. Making copy of complaint, and forwarding same (with notice) to incumbent or sequestrator - - - - - - - - - | 2 | 6 |
| 2. Bishop's direction to surveyor to inspect - - - - - - - | 2 | 6 |
| 3. Bishop's consent, under Sections 19, 21, 42, 41, 50, and 52 - - | 3 | 6 |
| 4. Counsel's opinion - - - - - - - - - - - - | — | |
| Instruction for case - - - - - - - - - - - - | 6 | 8 |
| Drawing same, per folio of 72 words - - - - - - - | 1 | – |
| Fair copy for counsel, per folio of 72 words - - - - - - | – | 4 |
| Attending counsel with and for case - - - - - - - | 6 | 8 |
| Fee to counsel and clerk as paid - - - - - - - - | — | |
| 5. Drawing up order by bishop, stating the repairs and their cost for which the late incumbent of a benefice, his executors or administrators, is or are liable - - - - - - - - - | 6 | 8 |
| 6. Making and sending each copy thereof, pursuant to Act - - - | 3 | 6 |
| *N.B.*—Similar charges for second order and copies thereof in contested cases under Sections 16 and 32. | | |
| 7. Authority to remove or substitute buildings, commission, and correspondence - - - - - - - - - - - - | 13 | 4 |

Appendix, No. 3.

DIOCESE OF LLANDAFF—*continued.*

| FEES OF BISHOP'S REGISTRAR. | s. | d. |
|---|---|---|
| 1. Registering every order, certificate, or consent | 2 | 6 |
| 2. Making and sending every copy order required to be made and sent by the registrar | 3 | 6 |
| 3. Registering authority to remove buildings | 2 | 6 |
| 4. Sequestration | 10 | – |

*Note.*—The above fees and charges are to be enforced for two years from the date of the surveyor's appointment, in order that they may be then revised and altered if necessary.

## DIOCESE OF MANCHESTER.

### ECCLESIASTICAL DILAPIDATIONS ACT, 1871.

SCALE of FEES from 1st August 1874, settled at Meeting convened for that purpose, and held 30th July 1874.

| SURVEYOR'S FEES AND CHARGES. | £. | s. | d. |
|---|---|---|---|
| 1. For the inspection of parsonage houses, with the offices, stables, and other appurtenances thereto belonging; for making and posting reports, and for furnishing the final certificates, as required by the Act, a fixed fee of | 2 | 2 | – |
| 2. For the inspection of any farms, with the farmhouse and buildings, making and posting reports, and furnishing the final certificate, as required by the Act, an extra fee of | 1 | 1 | – |
| 3. For the inspection of farms and farm buildings, in cases where there is no parsonage house | 2 | 2 | – |
| 4. For the inspection of a chancel, making and posting reports, and the final certificate | 2 | 2 | – |
| 5. For the inspection of buildings, and things not included under the above heads, which the incumbent is bound by law to maintain and repair | 1 | 1 | – |
| 6. For inspection and report under Sections 45 and 46; 4 per cent. upon the sum expended, in addition to such of the charges already specified as may be applicable. | | | |
| 7. For inspection and report under Section 22 | 1 | 1 | – |
| 8. For advising the bishop under Sections 70 and 71 | 1 | 1 | – |
| 9. That travelling expenses should be allowed for the surveyor himself, in the Archdeaconry of Manchester from Manchester, and in the Archdeaconry of Lancaster from Preston; any difference on the subject to be referred to the archdeacon of the archdeaconry in which the benefice shall be, whose decision shall be final. | | | |

| SECRETARY'S FEES. | £. | s. | d. |
|---|---|---|---|
| 1. (*a*) For making copy of complaint, and forwarding the same with notice to the incumbent or sequestrator<br>(*b*) Forwarding to the surveyor the bishop's direction to inspect<br>(*c*) Obtaining and signifying the bishop's consent under Sections 50 and 52<br>(*d*) Drawing up order by the bishop, and<br>(*e*) Making and sending by post each copy, pursuant to the Act, singly or conjointly | 1 | 1 | – |
| 2. In addition, 4*d.* per folio for all copies of documents, including, when necessary, a copy of the surveyor's report. | | | |
| 3. In all cases of correspondence, 3*s.* 4*d.* for each letter exceeding four. | | | |
| 4. Other charges to remain as before. | | | |

| FEES TO THE REGISTRAR. | | s. | d. |
|---|---|---|---|
| 1. Registering every order, certificate, or consent | – | 2 | 6 |
| 2. Making and sending every copy order required to be made and sent by the registrar | – | 3 | 9 |
| 3. Registering authority to remove buildings | – | 5 | – |
| 4. Sequestration | – | 10 | – |

# DIOCESE OF NORWICH.

## Ecclesiastical Dilapidations Act, 1871.

### Scale of Charges payable to the Diocesan Surveyor.

| Section of the Act. | | £. | s. | d. |
|---|---|---|---|---|
| 12 to 15. | For work required under these sections, together with one copy of report | 3 | 3 | – |
| 29 to 31. | For work required under these sections, together with one copy of report | 5 | 5 | – |
| | For other copies under any of the above-mentioned sections, and sending the same, per folio | – | – | 4 |
| 22. | For each inspection and report | 2 | 2 | – |
| 44. | For the first certificate | – | 10 | 6 |
| | For every subsequent one | – | 5 | – |
| 45. | For executing the work here provided, including all certificates required, 5 per cent. on the outlay. | | | |
| 46. | For certificate, and making and sending copies | 2 | 2 | – |
| 50 and 51. | For any certificates and copies required under these two sections | 2 | 2 | – |
| 52. | For certificate required | 2 | 2 | – |
| 54. | For valuing for insurance, when his services are required | 1 | 1 | – |
| 57. | For certifying in triplicate | 3 | 3 | – |
| 58and 59. | For inspecting under Section 58, if directed so to do, and for perusing counterpart of lease, under Section 59 | 1 | 1 | – |
| 70. | For advising the Bishop as to consent, if employed | 1 | 1 | – |
| 71. | Ditto ditto ditto | 1 | 1 | – |
| | For travelling expenses the amount actually disbursed; the distance to be calculated from some point within the diocese. | | | |

*Memorandum.*—The words in the Act, s. 15, (1), "specifying the same in detail," are considered to apply to such a general specification as shall be sufficient to show what works are needed, and what the estimate of their cost is; but do not mean that the surveyor should prepare an actual and minute working specification.

### Table of Fees payable to the Bishop's Secretary adopted in the Diocese of Norwich.

| Section of the Act. | | £. | s. | d. |
|---|---|---|---|---|
| 12, 22. | (1.) Making copy of complaint, and forwarding the same to the incumbent or sequestrator | – | 3 | 4 |
| 12, 13, 16, 22, 29, 32. | (2.) Preparing Bishop's direction to surveyor to inspect | – | 3 | 4 |
| 16. | (3.) Counsel's opinion:— | | | |
| | Instructions for case | – | 6 | 8 |
| | Drawing same, 1 *s.* per folio of 72 words. | | | |
| | Fair copy for counsel, 4 *d.* per folio of 72 words. | | | |
| | Attending counsel with case | – | 6 | 8 |
| | Fee to counsel and clerk, as paid. | | | |
| 30 to 34. | (4.) Drawing up order by Bishop, stating the repairs and their cost for which the late incumbent of a benefice, his executors or administrators, is or are liable | – | 10 | – |
| 35. | (5.) Making and sending each copy thereof, pursuant to the Act | – | 3 | 4 |
| 23, 43. | (6.) Sequestration.—The same fees as in the case of a sequestration under 1 & 2 Vict. c. 106. | | | |

Appendix, No. 3.

DIOCESE OF NORWICH—*continued.*

TABLE of FEES payable to the REGISTRAR for Work done under 34 & 35 Vict. c. 43.

| SECTION OF THE ACT. | | £. | s. | d. |
|---|---|---|---|---|
| 23. | The same as in the case of a sequestration under 1 & 2 Vict. c. 106. | | | |
| 27. | Filing certificate of surveyor - - - - - - - - | - | 3 | 4 |
| | Duplicate ditto, to be sent to Archbishop - - - - - | - | 3 | 4 |
| 35. | The like of Bishop's order - - - - - - - - | - | 3 | 4 |
| | Copy of certificate to be sent to Governors - - - - | - | 3 | 4 |
| 43. | Fees for sequestration, as under Section 23. | | | |
| 46. | Filing certificate of completion - - - - - - - | - | 3 | 4 |
| 50. | The like - - - - - - - - - - - - | - | 3 | 4 |
| 55. | Fee for each exhibit and record - - - - - - - - | - | 1 | - |
| 57. | Filing insurance certificate - - - - - - - - | - | 3 | 4 |

## DIOCESE OF OXFORD.

### ECCLESIASTICAL DILAPIDATIONS ACT, 1871.

THE following Rate of Charges to be paid to the Surveyor of Ecclesiastical Dilapidations for the Diocese of Oxford, for Work done in pursuance of the Act, was fixed by the Right Reverend John Fielder, Lord Bishop of Oxford, the Archdeacons and Rural Deans of the Diocese, and Maurice Charles Merttins Swabey, D.C.L., the Chancellor of the Diocese, assembled at a Meeting held at Oxford, on the 24th of October 1871, and duly convened for the purpose.

| Reference to Sections of the Act. | | £. | s. | d. |
|---|---|---|---|---|
| 12, 13, 14, 15, 29, 30, 31. | For every inspection of the buildings of a benefice, directed in consequence of a complaint from the Archdeacon, Rural Dean, or patron, or at the request of the incumbent, or, in cases of sequestration, or upon the avoidance of a benefice; including the preparation of the report - - - - - - - - | 3 | 3 | - |
| 14, 30. | For making and transmitting each copy of the report - - - | - | 5 | - |
| 30. | For certificate of transmission of the report - - - - | - | 5 | - |
| 22. | For each inspection and report directed under the 22nd section - | 2 | 2 | - |
| 44, 51, 52. | For every certificate stating the sum payable (Section 44) or the sum necessary (Section 51);—or for a postponement of the works (Section 52) - - - - - - - - - - - | - | 5 | - |
| 45. | In the case of a benefice under sequestration, or of the incumbent's neglect or refusal to repair:— For preparing specification and contract and directing the execution of the works, and giving all requisite certificates. 5 *l.* per cent. on the amount of the contract price. | | | |
| 46, 50, 57. | For a final certificate of completion, or a special certificate, or a certificate in case of destruction by fire, and making and transmitting it in triplicate (including any visit of inspection) - - No travelling expenses to be charged. | 2 | 2 | - |

*J. F. Oxen,*
President of the Meeting.

*Note.*—Section 46. The Bishop has decided that when the surveyor find repairs insufficiently performed, and he is unable to issue final certificates without another journey, he may charge a second fee.

DIOCESE OF OXFORD—*continued.* Appendix, No. 3.

THE following Fees of the Bishop's Secretary, and of the Registrar of the Diocese, for Work done in pursuance of the Act, were fixed by the Right Reverend John Fielder, Lord Bishop of Oxford, in conjunction with the Archdeacons and Rural Deans, and Maurice Charles Merttins Swabey, D.C.L., the Chancellor of the Diocese, assembled at a Meeting held at Oxford, on the 17th of June 1872, and duly convened for the purpose.

SECRETARY OF THE BISHOP.

| Reference to Sections of the Act. | | £. s. d. |
|---|---|---|
| 12, 14. | On an Inspection at request of an Incumbent: | |
| | Perusing the request, preparing directions to the surveyor, examining and entering his report, notifying when it becomes final, and incidental work | 1 1 – |
| 12, 14. | When an Inspection is ordered on Complaint: | |
| | Perusing the complaint and sending copies to the incumbent or sequestrator, preparing directions to the surveyor to inspect, perusing and entering the surveyor's report, and incidental work | 1 11 6 |
| 13. | On an Inspection of a Benefice under Sequestration: | |
| | Preparing directions to surveyor to inspect, perusing and entering report, and incidental work | 1 1 – |
| 29, 30, 31. | As to Vacant Benefices: | |
| | Preparing directions to the surveyor to inspect and report; perusing his report and certificates, and incidental work | 1 1 – |
| 34, 35. | Preparing, in triplicate, the order stating the repairs and cost, and transmitting the copies of the order as required | – 15 – |
| 16, 32, 34. | In Contested Cases (to be paid by the Objector): | |
| | Considering the objections to the report and entering them | – 10 6 |
| | Preparing directions for a second report | – 10 6 |
| | Preparing the Bishop's written decision, and communicating it | – 12 6 |
| | Preparing, in triplicate, the order stating the repairs and cost, and transmitting the copies of the order as required | – 15 – |
| | On taking the opinion of counsel | Professional charges. |
| 22. | Special disections for inspection and report during the progress of the works and on completion | – 10 6 |
| | Obtaining and transmitting the Bishop's consent for a loan from the Governors of Queen Anne's Bounty (17, 38, 49, 63) | – 10 6 |
| | For extension of time for repairs (Section 19), extra consent for repairs being deferred (21), enlargement of period for payment (41), consent to rebuilding (42), or to alterations or remodelling in lieu of repairs (50), authority for postponement of works (52), order for sequestration on neglect or refusal to repair (23, 43), consent to non-liability for substituted buildings (70) | – 5 – |
| 44, 45. | On counter-signature of surveyor's certificate | – 5 – |
| | In case of Destruction or Damage by Fire: | |
| 57. | Perusing, copying, in triplicate, and transmitting the Surveyor's certificates | 1 1 – |
| 71. | Considering application for removal of buildings and preparing Bishop's authority | 1 1 – |
| | REGISTRAR OF THE DIOCESE. | |
| | Registering every certificate, report, or order; and making and sending every copy order required | – 5 – |
| | In cases of sequestration the customary charges. | |

*J. F. Oxon,*
President of the Meeting.

Appendix, No. 3.

## DIOCESE OF PETERBOROUGH.

### Ecclesiastical Dilapidations Act, 1871.

The following Scale of Fees to be paid to the Bishop's Secretary and Registrar for the Diocese of Peterborough, for Work done in pursuance of the Act, was fixed by the Right Reverend William Connor, Lord Bishop of Peterborough, the Archdeacons and Rural Deans of the Diocese, and the Worshipful and Reverend William Wales, the Chancellor of the Diocese, assembled at a Meeting held at Peterborough, on the 4th day of January, 1872, and duly convened for the purpose.

| Sections. | To be paid by Surveyor. | Secretary. | Registrar. |
|---|---|---|---|
| | | £. s. d. | £. s. d. |
| 8–9. | On appointment of Surveyor: | | |
| | For correspondence, advertisements, and notices on convening meeting | 1 1 – | |
| | For preparation and completion of appointment, exclusive of stamp duty | 1 1 – | |
| | For registering appointment | – – | – 5 – |
| 66. | On filing resignation of surveyor | – – | – 2 6 |
| | **To be paid by Incumbents, &c.** | | |
| 12, 14, 16, 22, 29–35. | Inspection Reports and Orders in cases of request, complaint, or vacancy: | | |
| | For all work done under Sections 12, 14, 16, 22 (request or complaint) or under Sections 29–35 (vacancy). | | |
| | In uncontested cases | 1 1 – | |
| | In contested cases | 1 10 – | |
| | For filing any document under any of these Sections: | | |
| | For the first filing | – | – 2 6 |
| | For all subsequent filings, each | – | – 1 – |
| 17, 19, 21, 38, 41, 42, 49, 50, 52. | On Bishop's Consents and Orders: | | |
| | For copying and entering any consent or order under any of these sections | – 2 6 | |
| 46, 50, 52, 57. | On Surveyor's Certificates: | | |
| | Filing of any certificate under any of these sections | – | – 2 6 |
| 57. | In cases of Destruction of Buildings by Fire: | | |
| | For all work done: | | |
| | In uncontested cases | 1 1 – | |
| | In contested cases | 1 10 – | |
| 70, 71. | In cases of Removal or Substitution of Buildings: | | |
| | For all work done under Section 70 | 1 1 – | |
| | For all work done under Section 71 | 1 1 – | |
| | Miscellaneous: | | |
| | For copying, collating, and transmitting any document under any of the above sections | 4 *d.* per folio of 72 words. | |
| | On taking opinion of counsel | Usual professional charges. | |
| | **To be paid by Sequestrator, as Such.** | | |
| 13, 14, 16. | On Inspection of Benefice under Sequestration.—Report and Order thereon: | | |
| | In uncontested cases: | | |
| | Perusal of report and correspondence | – 10 6 | |
| | In contested cases: | | |
| | For all work done | 1 1 – | |
| | On filing any document under these sections — For the 1st | – | – 2 6 |
| | On filing any document under these sections — The rest, each | – | – 1 – |
| 21. | On copying and entering Bishop's consent under this section | – 2 6 | |

DIOCESE OF PETERBOROUGH—*continued.*

| SECTIONS. | | SECRETARY. | REGISTRAR. |
|---|---|---|---|
| | To be paid by Sequestrator, as such—*continued.* | | |
| 23, 43, 57. | On a Sequestration of Profits of Benefice: — | | |
| | For the Bishop's fiat - - - - - - | £. s. d. — 10 6 | |
| | For sequestration - - - - - - | Usual registry charges. | |
| | Miscellaneous: | | |
| | For copying, collating, and transmitting any document under any section of the list - - | 4 *d.* per folio of 72 words. | |
| | On taking opinion of counsel - - - - | Usual professional charges. | |
| | This scale of charges to be in force for one year, from the 4th of January 1872. | | |

(signed) *W. C. Peterborough,*
President of the Meeting.

THE following Scale of CHARGES and FEES to be paid to the Surveyors of Ecclesiastical Dilapidations, for the Diocese of Peterborough, for Work done in pursuance of the Act, was fixed by the Right Reverend William Connor, Lord Bishop of Peterborough, the Archdeacons and Rural Deans of the Diocese, and the Worshipful and Reverend William Wales, the Chancellor of the Diocese, assembled at a Meeting, held at Peterborough, on the 4th day of January 1872, and duly convened for the purpose.

| SECTIONS. | | £. s. d. |
|---|---|---|
| 12 to 15. 29 to 31. 50, 51 to 57. | First survey and report, including estimate, specifications, and certificate, showing in detail the work required to be done, so that a trustworthy contractor may estimate for the execution of the same in all ordinary cases of repair, or that an architect, after personal inspection of the premises, can prepare full specifications and instructions necessary for contractors to tender upon - | 3 3 — |
| | *Exception.*—When the time used for survey, including travelling, does not exceed half a day - - - - - - - | 2 2 — |
| | If a second day be required to complete the survey - - - | 2 2 — |
| | *Exception.*—When the time after the first day, including travelling, does not exceed half a day - - - - - - | 1 1 — |
| | Each additional copy of report, and sending - - - - | 4 *d.* per folio. |
| 22, 44, 46. | Every inspection of works and certificate - - - - - | 2 2 — |
| | *Exception.*—When time occupied, including travelling, does not exceed half a day - - - - - - - - - | 1 1 — |
| 44, 46, 50. | Each additional copy of certificate - - - - - - - | — 2 6 |
| 45. | Specifications, drawings, contracts, required under this clause, including inspection and certificates, 5 per cent. on outlay, less such sums as may have been paid for the preliminary survey and report, the minimum charge, when the work to be done does not exceed 100 *l.*, being 5 *l.* 5 *s.* | |
| | *Note* 1.—Amount actually paid by surveyor for advertisements to be repaid. *Note* 2.—Where the surveyor thinks it necessary to employ a clerk of the works, and the archdeacons shall consent thereto, by writing under his hand, counter-signed by the Bishop, the surveyor shall also be entitled to the amount reasonably and actually paid to such clerk for his services, not exceeding, in any case, 2 *l.* a week. | |
| 52. | Special certificate - - - - - - - - - - - | 1 1 — |
| 58, 59. | When time occupied extends to a whole day - - - - | 3 3 — |
| | When time occupied, including travelling, does not exceed half a day - - - - - - - - - - - - - | 1 11 6 |
| | Stamps, where necessary, extra. | |
| | Reasonable travelling expenses actually disbursed to be allowed; railway fares, second class; no travelling expenses beyond the limits of each surveyor's own district. | |
| | Amount paid by surveyor to labourers and artisans, to be repaid. | |
| | This scale of charges to be in force for one year from the 4th January 1872. | |

(signed) *W. C. Peterborough,*
President of the Meeting.

*N.B.*—Resolved, that the second quinquennial inspection in every case should be made at a reduced rate, to be hereafter fixed.

*W. C. P.*

Appendix, No. 3.

## DIOCESE OF RIPON.

### Ecclesiastical Dilapidations Act, 1871.

The principle upon which the Remuneration shall be determined is to have regard to the Value of the Benefice, and not to the Value of the Dilapidations.

The Fees payable to the Diocesan Surveyor, which are to cover all his expenses, are to be the following:—

| | First Survey. | | | Second Survey on Completion. | | |
|---|---|---|---|---|---|---|
| | £. | s. | d. | £. | s. | d. |
| Benefices at and under the value of 100*l.* - - - | 2 | 2 | – | 1 | 1 | – |
| „ „ „ 200*l.* - - - | 3 | 3 | – | 1 | 1 | – |
| „ „ „ 300*l.* - - - | 3 | 3 | – | 1 | 1 | – |
| „ „ „ 400*l.* - - - | 4 | 4 | – | 1 | 11 | 6 |
| „ „ „ 500*l.* - - - | 5 | 5 | – | 1 | 11 | 6 |
| „ „ „ 600*l.* - - - | 5 | 5 | – | 2 | 2 | – |
| „ „ „ 700*l.* - - - | 6 | 6 | – | 2 | 2 | – |
| „ „ „ upwards - - | 8 | 8 | – | 2 | 2 | – |

The Scale of Fees for Secretary and Registrar has not been settled. Pending a settlement, the London Scale has been, and will be, used.

## DIOCESE OF ROCHESTER.

### Eccesiastical Dilapidations Act.

A Schedule of Fees payable to Surveyors, Secretary, and Registrar, fixed by the Bishop, the Archdeacons, the Rural Deans, and the Chancellor of the Diocese, at a Meeting convened for that purpose, in conformity with 34 & 35 Vict. c. 43, s. 10, on 16th January 1872.

### Diocesan Surveyor's Fees..

| Sections of the Act. | | £. | s. | d. |
|---|---|---|---|---|
| 12, 15, 29, 31. | For work required to be done, viz., inspection of buildings, together with report to the Bishop, he shall be entitled to one uniform fee of - - - - - - - - - - | 5 | 5 | – |
| Ditto - | For all copies of the report, including delivery, per folio of 72 words - - - - - - - - - - - | – | – | 4 |
| 21. | For inspection and report on vacancy of sequestered benefice - | 2 | 2 | – |
| 22. | For inspection of repairs undertaken by incumbent on complaint | 2 | 2 | – |
| 44. | For certificate, where inspection is unnecessary - - - - - | – | 10 | 6 |
| „ | „ „ requisite - - - - - | 2 | 2 | – |
| 45. | For surveyor's work under this section, per cent. - - - - (No fee then to be charged under Sections 44 or 46.) | 5 | – | – |
| 46. | For certificate in triplicate, or sending the same - - - - | 2 | 2 | – |
| 50, 51. | For certificate, making and sending copies - - - - - | 2 | 2 | – |
| 52. | For certificate on postponement of works - - - - - | 1 | 1 | – |
| 57. | For certificate, in triplicate, after fire - - - - - - | 3 | 3 | – |
| 58 and 59. | For inspection of lease, and of buildings on lease - - - | 1 | 1 | – |
| | *Memoranda*:— 1. The surveyor's report, under Sections 12 to 15, and 29 to 31, is to include such a specification as in ordinary circumstances would enable a builder to carry out the works specified. 2. The surveyor shall charge the amount of actual disbursements for travelling expenses, and for work of artisans and labourers necessarily employed by him at surveys and inspections. | | | |

DIOCESE OF ROCHESTER—*continued.* Appendix, No. 3.

| SECTIONS OF THE ACT. | | £. s. d. |
|---|---|---|
| | BISHOP'S SECRETARY'S FEES. | |
| 8 and 9. | For preparation and completion of appointment of surveyor, exclusive of stamp duty | 1 1 – |
| 12, 16, 22, 29, 31, 34, 35, 57. | For all correspondence and work necessary to be done, whether on complaint of state of buildings, or on vacancy of the benefice, or on destruction by fire, or at request of incumbent:— | |
| | (*a.*) If the surveyor's report be uncontested | 1 1 – |
| | (*b.*) If „ „ contested | 2 2 – |
| 23, 43. | For the Bishop's fiat | – 10 6 |
| 17, 38, 49. | For Bishop's consent to loan, and patron's, for correspondence and other business connected therewith | – 10 6 |
| 19, 41, 52. | For Bishop's order for extension of time of repairs, or period of payments, or for postponement of works | – 10 6 |
| 21, 42, 50. | For Bishop's consent, and patron's, to defer repairs or rebuilding, or to alter and re-model, instead of repairing | – 10 6 |
| 44, 45. | For Bishop's counter-signature of surveyor's certificate | – 5 – |
| 70. | For Bishop's consent to non-liability of incumbent, examination of papers, correspondence, &c., in respect of buildings pulled down before the passing of this Act | 1 1 – |
| 71. | For the Bishop's authority, and consent of patron, for removal of buildings, &c., all charges included | 1 1 |
| | DIOCESAN REGISTRAR'S FEES. | |
| 12, 13, 14, 16, 22, 27, 29, 35, 46, 50, 57. | For filing each paper required to be filed | – 2 6 |
| | For registering each paper required to be registered | – 5 – |
| | For all copies to be made and delivered, at the rate of per folio of 72 words | – – 4 |
| 23, 43. | For sequestration | Usual registry charges. |

*T. L. Roffen*, Chairman.

## DIOCESE OF SALISBURY.

### ECCLESIASTICAL DILAPIDATIONS ACT, 1871.

Salisbury, 9 April 1872.

AT a Meeting convened for the purpose, present:—The Lord Bishop in the chair, the Archdeacons, the Chancellor, the Rev. J. D. Hodgson, the Rev. Prebendary Eddrup, the Rev. J. G. Brine, the Rev. R. A. Barrett, the Rev. M. J. Green, the Rev. H. H. Wood, the Rev. T. Carey, the Rev. A. Codd, the Rev. A. Baynham, the Rev. Prebendary Payne, the Rev. G. Southwell, and the Rev. R. S. Hutchings, the following rate of charges to be paid to the Surveyor, and the following Fees to the Bishop's Secretary and Registrar, for work done in pursuance of the Ecclesiastical Dilapidations Act, were fixed for this Diocese.

DIOCESAN SURVEYOR'S FEES.

| SECTIONS. | | £. s. d. |
|---|---|---|
| 12 to 15, and 29 to 31. | For first day | 3 3 – |
| | For each succeeding day | 2 2 – |
| | No additional charge to be made for reports and specification in detail. | |
| 22. | For each inspection | 2 2 – |
| 44 and 52. | Where special visit required | 1 11 6 |
| | When no visit required | – 10 6 |
| 45. | Five per cent. on outlay, to include all certificates, and also to include preliminary inspection where outlay exceeds 300 *l.* | |
| 46. | For certificate in triplicate | 2 2 – |
| 50 and 51. | For certificate, making and sending copies | 2 2 – |
| 57. | For certificate in triplicate, after fire | 2 2 – |
| 58 and 59. | For perusing lease | – 10 6 |
| 54, 70, and 71. | If employed | 1 1 – |

For Hotel and Travelling Expenses.

Amount actually and reasonably paid, but in no case exceeding, for the former, 10 *s.* 6 *d.* a day; for the latter, 1 *s.* 6 *d.* per mile by road one way, and first-class railway fare.

The surveyors undertake to start from home by an early train, so as to give those living in the more remote parts of their districts the advantage of a fair day's work.

Appendix, No. 3.

## Diocese of Salisbury—*continued.*

### Bishop's Secretary's Fees.

| Sections. | | £. | s. | d. |
|---|---|---|---|---|
| 12, 14, 16, 22. | In relation to Inspection of Benefice on Complaint or Request: | | | |
| | In uncontested cases | 1 | 1 | – |
| | In contested cases | 2 | 2 | – |
| 13. | In relation to Inspection of Benefice under Sequestration: The like fees. | | | |
| 29 to 35. | In relation to Inspection of Benefice on Vacancy: The like fees. | | | |
| 57. | On proceedings under Section 57, the same fees as on proceedings on a complaint. | | | |
| 23, 43, 57. | In relation to the Sequestration of a Benefice: | | | |
| | For the Bishop's fiat | – | 10 | 6 |
| 17, 38, 49, 63 | On Bishop's consent to loan to incumbent, including correspondence and attendances | – | 10 | 6 |
| 19, 41, 52. | On Bishop's order for extension of time for execution of repairs (Section 19). On enlargement of period of payment (Section 41); or postponement of works (Section 52) | – | 5 | – |
| 21, 42, 50. | On Bishop's consent for repairs to be deferred (Section 21); or to rebuilding (Section 42); or for alterations and remodelling in lieu of repairs (Section 50) | – | 5 | – |
| 44, 45 | On counter-signature of surveyor's certificate | – | 5 | – |
| 70. | On consent of the Bishop to non-liability of incumbent in respect of buildings pulled down for which other buildings have been substituted, including attendances, examination of papers and plans, and correspondence relating thereto | 1 | 1 | – |
| 71. | For the Bishop's authority upon application of incumbent, with consent of patron, for removal of buildings and application of proceeds, including perusal of application and consent, attendances, and correspondence | 1 | 1 | – |
| | For taking counsel's opinion, the usual professional charges. | | | |

### Diocesan Registrar's Fees.

| | £. | s. | d. |
|---|---|---|---|
| For filing any document in pursuance of the Act | – | 3 | 4 |
| For making and transmitting copy certificate | – | 5 | – |
| For search proceedings | – | 1 | – |
| For extracts therefrom, per folio of 72 words | – | – | 4 |
| Fee on exhibit of receipt for fire insurance premium | – | 1 | – |
| For sequestration, same fees as for a sequestration under 1 & 2 Vict. c. 106. | | | |

## DIOCESE OF WORCESTER.

### Ecclesiastical Dilapidations Act, 1871.

Rate of Charges to be paid to the Surveyors, fixed at a Meeting convened under Section 10, 27th September 1871.

| Sections. | | £. s. d. |
|---|---|---|
| 12 to 15. | First survey and report or certificate | 4 4 – |
| 29 to 31. | *Exception.*—When the time used for the survey, including travelling, does not exceed half a day | 2 12 6 |
| 50, 51, 57. | Each day, after the first, required to complete the survey | 3 3 – |
| | *Exception.*—When the time, after the first day, does not exceed half a day | 1 11 6 |
| | Each additional copy of the report | – 5 – |
| 22, 44, 46. | Each inspection of the works and certificate | 2 12 6 |
| | *Exception.*—When the time used, including travelling, does not exceed half a day | 1 11 6 |
| 44, 46, 50. | Each additional copy of certificate | – 2 6 |
| 45. | Specification, drawings, and contracts, required under this clause, including inspections and certificates | 5 per cent. on the amount of outlay. |
| 52. | Special certificate | – 10 6 |
| | For every visit, reasonable travelling expenses. | |
| | When stamps are necessary, the cost of them to be an additional charge. | |
| | The amount paid to labourers and artisans to be also added. | |

Fees to be paid to the Bishop's Secretary and Registrar, for Work done in pursuance of the Act, fixed at a Meeting convened under Section 10, 27th September 1871.

| Sections. | | Secretary. | Registrar. |
|---|---|---|---|
| 8 and 9 | On appointment of Surveyor: | £. s. d. | £. s. d. |
| | For correspondence and notices on convening meeting | 1 1 – | |
| | For preparation and completion of appointment, exclusive of stamp duty | 2 2 – | |
| | For registering appointment | – – | 8*d.* per folio of 72 words. |
| 10 | For registering rate of charges and scale of fees, and any alteration on revision thereof | – – | The like. |
| 12, 14, 16, 22, | On an Inspection Report and Order on a Complaint or on Request: | | |
| | In uncontested cases: | | |
| | For perusal of complaint, making and sending copies of complaint to incumbent or sequestrator, direction to inspect, perusal and entry of surveyor's report, attendances on the bishop, and correspondence relating to the matter | 1 11 6 | |
| | On filing report | – – | – 5 – |
| | In contested cases; | | |
| | For perusal of objections to report; attendances and correspondence relating thereto | 1 1 – | |
| | On direction for second report and correspondence with surveyor named therein | – 10 6 | |
| | On taking opinion of counsel | Usual professional charges. | |
| | On obtaining the bishop's decision and filing report as modified thereby | – 10 6 | |
| | On filing report | – – | – 5 – |

Appendix, No. 3.

## DIOCESE OF WORCESTER—*continued.*

| SECTIONS. | | SECRETARY. £. s. d. | REGISTRAR. £. s. d. |
|---|---|---|---|
| 13 | On an inspection of Benefice under Sequestration; Report and Order thereon: | | |
| | In uncontested Cases; | | |
| | Direction to inspect, perusal and entry of report, attendances and correspondence - | 1 1 – | |
| | In contested Cases; | | |
| | The like fees as on inspection on a complaint or request. | | |
| | On filing final report - - - - - - | - - | – 5 – |
| 29 to 35 | On an Inspection Report and Order in cases of Vacancies: | | |
| | In uncontested cases: | | |
| | On direction to inspect and report, perusal and entry of report and surveyor's certificates, preparation of order, triplicate copies and transmission thereof, attendances and correspondence relating thereto - - - | 1 11 6 | |
| | In contested cases: | | |
| | The like fees as in contested cases on a complaint or request. | | |
| | On filing order - - - - - - | - - | – 5 – |
| | Copy thereof, collating, and transmission - | - - | 8*d.* per folio of 72 words. |
| 23 and 43 | On a Sequestration of Profits of Benefice: | | |
| | For the bishop's fiat - - - - - - | – 10 6 | |
| | For sequestration - - - - - - - | - - | Usual registry charges. |
| 27 | On filing Certificate of Execution of Works: | | |
| | Collating duplicate and service thereof - - | - - | – 10 – |
| 17, 38, 49 | On bishop's consent to loan to incumbent, including correspondence and attendances - - - - | – 10 6 | |
| 19, 41, 52 | On bishop's order for extension of time for execution of repairs (Sec. 19); on enlargement of period of payment (Sec. 42) or postponement of works (Sec. 52) - - - - - - - - - - | – 10 6 | |
| 21, 42, 50 | On bishop's consent for repairs to be deferred (Sec. 21), or to rebuilding (Sec. 42), or for alterations and remodelling in lieu of repairs (Sec. 50) - - | – 10 6 | |
| 44, 45 | On counter-signature of surveyor's certificate - - | – 5 – | |
| 46, 52, 57 | On filing certificate of surveyor of completion of works (Sec. 46), or as to postponement of works (Sec. 52), or as to monies required (Sec. 57) - | - - | – 5 – |
| 57 | On proceedings under Sec. 57, the same fees as on proceeings on a complaint. | | |
| 66 | On filing registration of surveyor - - - - - | - - | – 5 – |
| 70 | On consent of the bishop to non-liability of incumbent in respect of buildings pulled down, for which other buildings have been substituted, including attendances, examination of papers and plans, and correspondence relating thereto - - - - | 2 2 – | |
| 71 | For the bishop's authority upon application of incumbent, with consent of patron, for removal of buildings and application of proceeds, including perusal of application and consent; attendances and correspondence - - - - - - | 2 2 – | |

## Appendix, No. 4.

PAPER handed in by Mr. *Simmons*, 1 May 1876. Appendix, No. 4.

### CASE AND OPINION.

Two cases of assessment of "Dilapidations" have recently arisen in the diocese of Bath and Wells which have caused a widespread feeling of surprise and alarm among the clergy at large; surprise, because the thing chiefly marking the character of those assessments is a new and strange thing in the history of dilapidations; alarm, because if allowed to stand, it becomes a precedent for establishing the rule of an arbitrary and wholly unlimited liability as against the outgoing incumbent. The cases are those of Axbridge and Paulton. In the case of Axbridge the surveyor ordered a window to be restored and a reredos to be removed which was put up (as far as can be ascertained) about the year 1722, and left untouched by successive incumbents from that time to the present. The following is an extract from the bishop's order: "Repair and make good the four-light window in east wall with the tracery in head of same, filling the openings with glazed and leaded quarry lights as originally, and removing *ex necessitate* the Corinthian columns and entablature in the interior, with woodwork at sides now partly decayed." The outgoing incumbent objected (though not formally to the bishop) to being called upon to pay for restoring to its original condition a window which had been blocked up by the erection of the reredos some 150 years ago, and which, it must be presumed, was legally placed there, but the diocesan surveyor supports his report on which the bishop's order is based by the following quotation from the judgment of Mr. Justice Bayley in the case of "Wise *v.* Metcalf" about the year 1829: "Upon the whole we are of opinion the incumbent was bound to maintain the parsonage and also the chancel, and keep them in good and substantial repair, restoring and rebuilding when necessary, according to the original form, without addition or modern improvement." The opinion of counsel will be asked below whether it is reasonable to put the construction for which the surveyor and the bishop contend upon the words "restoring and rebuilding when necessary according to the original form" taken with their context. In this case the late incumbent had nothing to do with the illegal destruction of the window which he was called upon to restore, and it is contended that the words "when necessary" cannot be construed to go beyond necessary substantial repairs, and cannot be made to include restoration of what the outgoing incumbent had had no hand in removing.

In the Paulton case the order of the bishop had not yet been received, but the surveyor reports as works necessary to be done (*inter alia*) the making a fence to a glebe field which from time immemorial has been in common with other property, and never had any such fence when it became glebe about 60 years since; and also the repairing a gate leading to the same which has never been repaired by any vicar, but always by the owner of the estate adjoining the glebe field, and with which it has always been in common; also the placing of well harness to all wells on the glebe land where such have hitherto been put up at the charge not of the glebe owner, but of the tenant; also the pointing of walls on the vicarage premises which were never pointed before.

Counsel's opinion is desired on the following points:—

1. Can an outgoing incumbent be called upon to restore what has not been in use for more than 150 years, in respect of which restoration he had received nothing from his predecessor?

2. Can a rector be required to remove

Opinion.

1 and 2. We are of opinion that an incumbent cannot be called upon to restore that which has not been in use for more than 150 years, and in respect of the restoration of which he had received nothing from his predecessor; and that a rector cannot be required to remove from the chancel at his expense

Appendix, No. 4.

from the chancel at his sole expense and without a faculty a reredos which has been in the church during the incumbency of many previous rectors?

expense a reredos which has been in the church during the incumbency of many previous rectors, and this altogether apart from the question of the necessity or otherwise of a faculty. Such a "restoration" as this would not be a restoration in the very limited sense in which, as an act *ejusdem generis* with repair, it can be required of an incumbent.

3. Can an outgoing incumbent be called upon to erect a fence to a glebe field where from time immemorial there has not been one, though the surveyor says there are traces of the old ditch and two thorn bushes still growing to show that the original fence belonged to the glebe? though this is contested by the outgoing incumbent.

3. Laying out of our consideration the slightness of the evidence of the existence of any previous ditch and hedge, we are of opinion that an incumbent is protected by Sect. 70 of the Ecclesiastical Dilapidations Act, 1871, from liability to renew a fence which was destroyed before his time, and for which he can get no dilapidation monies from his predecessor.

4. Can he be called upon to make improvements such as pointing walls which were never pointed before?

4. It may be that a wall, though never previously pointed, is in such a state that the proper repair to it is by pointing. In this case, but not in others, an incumbent can be called upon to pay for pointing a wall.

5. Can he be called upon to put up well harness where none existed before? or where it has always been put up by the tenant and not by the freeholder?

5. An incumbent cannot be called upon to put up well harness where none existed before; but he can be called upon to put it up where it has been previously put up, though by the tenant and not by the landlord. His remedy in this case is to recover over against the tenant.

6. Is it a reasonable construction to put on the judgment above quoted to say that "restoring and rebuilding when necessary according to the original form" would include such alterations in the fabric as ordered by the surveyor in the Axbridge case?

7. Generally can "Dilapidations" be legitimately construed to include any improvements over and above such improvement as is a necessary accident of substantial repair of buildings, &c., existing, and of replacement of buildings, &c., unlawfully removed?

6 and 7. It is not a reasonable construction to put on the judgment in "Wise *v.* Metcalf" (10 B. & C. 299) to say that "restoring and rebuilding when necessary according to the original form" would include such alterations in the fabric as ordered by the surveyor in the Axbridge case. Dilapidations cannot be legitimately construed to include improvements other than such as must occur in the good and substantial repair or rebuilding of the buildings of a benefice.

Temple, 29 March 1876.

(signed) *J. Parker Deane.*
*Walter G. F. Phillimore.*

## Appendix No. 5.

PAPER handed in by the Lord Bishop of *Peterborough*, 4 May 1876.

## THE ECCLESIASTICAL DILAPIDATIONS ACT, 1871.

### DIOCESE OF PETERBOROUGH.

| | Archdeaconry of Northampton. | | | | | Archdeaconry of Leicester. | | | | | Archdeaconry of Oakham. | | | | | Total Number of Surveys Ordered. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Request. | Vacancy. | Complaint. | Sequestration. | Total. | Request. | Vacancy. | Complaint. | Sequestration. | Total. | Request. | Vacancy. | Complaint. | Sequestration. | Total. | |
| Number of surveys ordered to 31st March 1876 | 17 | 47 | 1 | 3 | 68 | 13 | 51 | 2 | 2 | 68 | 5 | 40 | 2 | 1 | 48 | 184 |

On Request - - 35
„ Vacancy - - 138
„ Complaint - 5
„ Sequestration - 6
184

| | Northampton. | Leicester. | Oakham. | Total. |
|---|---|---|---|---|
| | £. s. d. | £. s. d. | £. s. d. | £. s. d. |
| Amount of dilapidations assessed upon benefices since the passing of the Act | 16,841 – 11 | 15,030 3 5 | 11,042 12 – | 42,913 16 4 |
| Average amount of dilapidations | 267 6 4 | 221 – – | 245 7 – | 244 4 8 |
| Largest amount of dilapidations | 945 – – | 1,900 – – | 916 – – | — |
| Smallest amount of dilapidations | 7 10 – | Nil | 6 14 – | — |
| | *Number.* | *Number.* | *Number.* | *Number.* |
| Number of cases of objections against surveyors' reports | 18 | 3 | 2 | 23 |
| Number of cases in which legal opinion taken by the bishop | 6 | - - - | - - - | 6 |
| Number of cases in which second survey was ordered | 4 | - - - | 1 | 5 |
| | £. s. d. | £. s. d. | £. s. d. | £. s. d. |
| Average cost of survey | 8 10 10 | 10 5 8 | 7 1 – | 8 12 9 |
| Average amount of bishop's secretary's, and registrar's fees:— | | | | |
| In contested cases | 2 1 – | 2 1 – | 2 1 – | — |
| In uncontested cases | 1 9 – | 1 9 – | 1 9 – | — |
| Average annual income of surveyor under this Act | 103 10 – | 110 18 – | 60 7 6 | — |
| Average annual income of bishop's secretary and registrar under this Act | - - - | - - - | - - - | 57 2 4 |
| Total average amount of payments to diocesan officers under the Act in each archdeaconry:— | | | | |
| In contested cases | 10 13 10 | 12 6 8 | 9 2 – | — |
| In uncontested cases | 9 19 10 | 11 14 8 | 8 10 – | — |
| Total cost of each survey on an average throughout the diocese:— | | | | |
| In contested cases | - - - | - - - | - - - | 10 14 2 |
| In uncontested cases | - - - | - - - | - - - | 9 18 2 |

## Appendix, No. 6.

Appendix, No. 6.

PAPER handed in by the *Chairman*.

### MEMORANDUM and STATEMENT upon the ECCLESIASTICAL DILAPIDATIONS ACT, by the BISHOP of EXETER.

IN the diocese of Exeter the Ecclesiastical Dilapidations Act appears to me to have worked well. The complaints against it have been few. But I must add that in some of those few instances there appears to have been great hardship; and though formal complaints have been few, I constantly hear it said by the clergy that the surveyor's charges are too high, that the power of the surveyor is too great, and that the present generation of incumbents is called on unjustly to bear the whole burden of past neglect.

I. I see but one way of lowering the surveyor's charges, and that is to make the surveys regular instead of irregular, and this implies making them compulsory instead of optional. I have no doubt that if this were done the surveyors might be paid by salaries instead of by fees, and, while the total amount paid to them would not be less, the cost borne by the incumbents, being universal, would press less heavily on each, and might be more equitably adjusted. I do not think it would be wise to lower the class of surveyors employed, and I do not think men of the right sort could be got for less money. I send herewith the charges which are made in the diocese of Exeter.

The incumbents sometimes complain that the surveyor's charge should be so high, when perhaps the repairs ordered to be done are trifling. But I know no other way of correcting this except to substitute salaries for fees, as I have above suggested. The survey which ends in ordering very little will often cost the surveyor as much trouble as one which ends in ordering a great deal. And it would be most unwise to make the charge of the surveyor depend on the largeness of his order.

II. The second complaint of the power given to the surveyor is, in my judgment, irremediable. The usual corrective is to give an appeal; but I doubt if a better appeal could be devised than the Act provides, and I am certain that no cheaper could be devised. In all technical matters we are of necessity in the hands of experts, and I do not believe it is possible to get out of their hands.

The incumbents sometimes complain that the appointment of surveyors should not be in their hands. This complaint is not common in the diocese of Exeter; but it *is* sometimes heard. In the diocese of Exeter the rural deans (who appoint the surveyors) are elected annually by the clergy, and consequently the clergy indirectly have a voice in appointing the surveyors. This mode of appointing rural deans is peculiar to the diocese of Exeter, and works exceedingly well. I can well understand that in other dioceses the clergy consider that they have not sufficient power in the appointment of surveyors, and I think it might be well to remedy this.

Some of the clergy wish several surveyors to be appointed to each archdeaconry, and then an option to be given to each incumbent to call in his own. This would be found in the end dearer than the present plan. In all cases where two incumbents were concerned (an out-going and an in-coming) it would be necessary to have two surveyors; and payment by salaries would be impossible.

III. The third grievance is the one that presses most heavily where it does press; the hardship every now and then is extremely great. I have known some instances of incumbents appointed just before the passing of the Act who have had occasion very greatly to regret that they accepted their livings.

Here, however, it is necessary to distinguish between two cases; for there are incumbents appointed before the passing of the Act who have been *participes criminis*, who have held their benefices very long and have neglected their buildings, and the Act does no more than call upon them to make good their own default; but this is not the case with all. There are not a few who came into possession of buildings almost incapable of repair, who have just kept them up as they found them, and who are now called on to make them substantially good. And this sometimes presses with peculiar hardship on the family of a deceased incumbent.

Clauses 17 and 38 of the Act are intended to meet this class of complaints by enabling the incumbent to borrow from the Bounty Board, and thus throw the burden on the living.

But Clause 38 does not remedy the injustice done to the family of a deceased incumbent.

And both clauses are subject to the consent of the patron as well as to the consent of the bishop; and it is not the interest of the patron to allow the incumbent to get this relief.

I think it would be just to the incumbents to regulate and extend this borrowing power.

It should

It should be still under such control as not to allow those who have been guilty of neglect in the past to throw their just burden on their successors, and either the bishop, or some proper tribunal, should have the power to veto the borrowing.

But subject to this control it would be just to throw on the living what may be called landlord's repairs, and to leave the incumbent to bear the cost of tenant's repairs. This, as I understand it, is the principle of repairs, Ecclesiastical Residences (Ireland) Act. I think this principle sound, and it would not require much amendment of the Ecclesiastical Dilapidations Act to introduce it therein.

I do not go into the question whether it would be wise to throw the burden of all these repairs, not on the livings, but largely on Queen Anne's Bounty, because the expediency of such a plan must depend on careful calculations, which I have not made. But in regard to this suggestion, I wish to remark that I think it would be highly inexpedient to take the repairs of their buildings out of the hands of the incumbents; they will, on the whole, do those repairs better and cheaper than anyone else can do them. To send off for the Bounty Office surveyor every time a pipe burst or a dozen slates were blown off would be found a very expensive mode of keeping a house in order.

I think that if in all cases where there had been no neglect the burden of repairs of substance, whether arising from decay of structure or originally defective building, could be thrown on the living through an enlargement of the present borrowing power, the Act would on the whole be freed from all real fault.

IV. There is one minor matter which has never been subject of complaint, as far as I know, but which deserves attention.

By Clause 36 of the Act, an outgoing incumbent is to pay the amount stated in the bishop's order as the sum necessary for the repairs to the incoming incumbent. Now it sometimes happens that the repairs are completed to the satisfaction of the surveyor for a less sum than he had calculated.

There is a direction in the Act to say, what is to be done with any such surplus (Sect. 65); but it seems to me that it ought to be paid back to the outgoing incumbent.

---

## Diocese of Exeter.

| | |
|---|---|
| Total number of benefices | 723. |
| Parsonage houses | 616. |

### Aggregate Value of Benefices in the Diocese.

| | £. |
|---|---|
| Tithes | 181,850 |
| 28,070 acres of glebe, say, on average, 1 *l.* per acre | 28,070 |
| Other sources of income | 31,617 |
| £. | 241,537 |

| | Number of Inspections under the Dilapidations Act. | Total Estimated Cost of Repairs. |
|---|---|---|
| | | £. s. d. |
| 1872 | 77 | 13,786 4 4 |
| 1873 | 50 | 7,215 11 – |
| 1874 | 42 | 6,171 1 6 |
| 1875 | 24 | 4,559 19 6 |

*N.B.*—There are six surveyors. Four are appointed generally; one (Western Division of Cornwall) for 10 years, determinable by the Bishop or the surveyor on three months' notice, and one (Eastern Division of Cornwall) for seven years.

## Appendix, No. 7.

STATEMENT prepared by Mr. *Bruton*,

ABSTRACT of Surveyors' Returns of Surveys made,

| DIOCESE. | SURVEYOR. | Number of Directions to Inspect. | Complaint. | Sequestration. | Voluntary. | Vacancy. | Total Number Surveyed. | Amount of Assessment for the Dilapidations. | Amount of Surveyors' Charges on the Reports and Assessments. |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | £. s. d. | £. s. d. |
| Canterbury | Joseph Clarke | 61 | 2 | 1 | 9 | 49 | 56 | 9,143 15 5 | 509 16 7 |
| " | L. H. Spooner | 62 | 1 | 2 | 11 | 48 | 62 | 9,761 4 11 | 564 1 8 |
| York | C. T. Newstead | 28 | – | – | 4 | – | – | (This surveyor has been superseded) | – – |
| " | C. N. Armfield | 88 | 2 | 4 | 13 | 69 | 76 | 11,217 1 10 | 525 9 2 |
| London | Gordon M. Hills | 127 | – | 1 | 15 | 111 | 116 | 8,188 13 – | 576 19 – |
| Durham | Robt. J. Johnson | 77 | – | 3 | 1 | 73 | 70 | 8,998 17 7 | 289 16 – |
| Winchester | A. R. Barker | 154 | 2 | 4 | 22 | 126 | 152 | 22,065 9 – | 931 14 9 |
| Bangor | Henry Kennedy | 52 | – | 1 | 19 | 32 | 52 | 3,435 4 11 | 161 10 – |
| Bath and Wells | C. R. Wainwright | 52 | – | 3 | 10 | 35 | 48 | 9,515 19 8 | 361 16 2 |
| " | Edwin Hippesley | 49 | – | 1 | 7 | 38 | 45 | 8,408 5 2 | 306 9 4 |
| " | Arthur Whitehead | 48 | 1 | 2 | 4 | 41 | 46 | 8,905 11 5 | 292 5 – |
| Carlisle | Chas. Fergusson | 66 | 1 | 2 | 11 | 46 | 65 | 6,259 2 9 | 286 6 6 |
| " | Crayston Webster | 39 | – | – | – | – | 38 | 3,067 19 9 | 198 13 6 |
| Chester | C. Sherlock | 95 | – | 3 | 29 | 63 | 93 | 8,696 10 4 | 386 4 9 |
| Chichester | Lacy W. Ridge | 93 | 2 | – | 34 | 57 | 91 | 11,994 10 – | 611 1 9 |
| Ely | John Day | 58 | 2 | 2 | 9 | 45 | 54 | 8,492 18 8 | 186 17 9 |
| " | W. M. Fawcett | 58 | – | 2 | 12 | 48 | 57 | 9,866 14 9 | 200 9 9 |
| " | R. R. Rowe | 49 | 2 | 1 | 7 | 39 | 48 | 15,162 3 6 | 279 4 2 |
| Exeter | E. L. Luscombe | 60 | 1 | 3 | 19 | 37 | 58 | 12,139 12 9 | 258 3 – |
| " | G. Arnold | 50 | – | – | – | – | – | – – – | – – |
| " | T. Lidstone | 23 | – | 2 | 6 | 15 | 23 | 7,673 5 7 | 130 19 – |
| " | J. M. Andrew | 25 | – | 1 | 12 | 12 | 25 | 2,494 8 – | 147 8 6 |
| " | H. Burt | 39 | 2 | – | – | – | 39 | 3,475 14 7 | 174 13 6 |
| " | T. R. Olver | 28 | – | 1 | 3 | 24 | 24 | 1,895 13 5 | 172 7 6 |
| Gloucester and Bristol | A. W. Maberley | – | (This surveyor has been superseded) | | | | – | – – – | – – |
| " | F. S. Waller | 16 | – | – | – | – | 16 | 2,794 18 10 | 108 9 8 |
| " " | T. S. Pope | 44 | – | 2 | 1 | 41 | 44 | 5,507 6 – | 124 18 – |
| Hereford | Thos. Nicholson | 136 | – | – | – | – | – | – – – | – – |
| Lichfield | C. Lynam | 74 | – | – | – | – | 74 | 8,574 – – | – – |
| " | F. J. Robinson | 65 | 1 | – | 11 | 53 | 62 | 5,760 17 8 | 547 15 2 |
| " | Thos. Groves | 38 | – | – | – | – | – | – – – | – – |
| Lincoln | James Fowler | 125 | – | 8 | 17 | 100 | 125 | 14,900 1 6 | 657 3 10 |
| " | Henry Goddard | 66 | – | 3 | 12 | 51 | 66 | 9,270 18 1 | 302 15 2 |
| " | T. C. Hine | 72 | 1 | 1 | 9 | 59 | 70 | 10,597 7 1 | 375 11 – |
| Llandaff | John Pritchard | 28 | – | – | – | – | – | – – – | – – |
| " | W. P. James | 48 | – | 4 | 1 | 43 | 48 | 2,980 10 9 | 202 13 – |
| Manchester | Wm. Bell | 143 | 1 | 3 | 64 | 75 | 128 | 17,750 4 6 | 221 4 2 |
| Norwich | John H. Brown | 48 | – | – | – | – | – | – – – | – – |
| " | E. L. Blackburne | 36 | – | – | 1 | 34 | 35 | 3,588 19 7 | 276 6 – |
| " | R. M. Phipson | 125 | – | 3 | 7 | 113 | 123 | 14,084 – 5 | 762 3 8 |
| Oxford | E. G. Bruton | 215 | 2 | 5 | 48 | 160 | 208 | 28,017 4 6 | 781 8 – |
| Peterborough | C. A. Macaulay | 70 | 1 | 2 | 13 | 54 | 70 | 15,030 3 5 | 430 5 2 |
| " | Edw. Browning | 48 | 3 | 1 | 9 | 35 | 42 | 11,093 13 – | 180 15 – |
| " | Thos. G. Jackson | 74 | 1 | 3 | 17 | 53 | 69 | 21,017 1 2 | 359 14 10 |
| Ripon | R. Nicholson | 142 | – | 6 | 50 | 86 | 142 | 21,689 18 – | 596 8 – |
| Rochester | F. Chancellor | 124 | – | 7 | 20 | 97 | 110 | 19,870 13 – | 657 12 4 |
| " | Gordon M. Hills | 88 | 1 | 1 | 23 | 63 | 79 | 17,352 6 8 | 561 17 5 |
| Salisbury | Henry Weaver | 65 | – | – | 10 | 55 | 65 | 8,164 9 – | 234 3 – |
| " | G. R. Crickma | 90 | – | 7 | 14 | 69 | 88 | 16,668 18 – | 298 11 6 |
| St. Asaph | Edward Jones | 56 | – | – | 14 | 42 | 52 | 11,100 17 – | 329 4 – |
| St. David's | R. H. Harvey | 110 | – | – | – | – | – | – – – | – – |
| Worcester | Henry Rowe | 52 | 1 | 1 | 10 | 40 | 49 | 5,844 18 – | 236 3 6 |
| " | Francis Wilmot | 72 | – | 1 | 10 | 61 | 71 | 8,066 19 – | 417 1 – |

*N.B.*—This Return extends from the commencement of th

## Appendix, No. 7.

and handed in by Mr. *Hills*.

and the CHARGES thereon, from August 1871 till March 1876.

| | Number of Certificates of Completion. | Amount of Surveyors' Charges on Inspection of Works done and on Certificates. | Total of Surveyors' Charges, deducting Expenses when Paid by Surveyor, and adding when Paid by Incumbent. | By whom the Expenses are Paid. | REMARKS. | Amount per Annum as earned by the Surveyor after deducting the Expenses. |
|---|---|---|---|---|---|---|
| | | £. s. d. | £. s. d. | | | £. s. d. |
| 1 | 28 | 93 19 – | 460 15 4 | Surveyor | | 102 8 – |
| 2 | 39 | 70 17 6 | – – – | ,, | Surveyor died. | — |
| 3 | – | – – – | – – – | – | No return from surveyor. | — |
| 4 | 52 | Included in Column No. 10. | 720 17 9 | Incumbent | | 116 13 4 |
| 5 | 46 | 141 18 – | 757 18 10 | ,, | | 159 15 – |
| 6 | 35 | Included in No. 10 | 331 17 2 | ,, | | 64 8 – |
| 7 | 90 | – – ditto – | 1,104 2 2 | – | Return perfect as to 154 orders. Forty-one orders for inspection made by the Bishop are not included in it. | — |
| 8 | 32 | – – ditto – | 93 6 – | Surveyor | | 20 15 – |
| 9 | 23 | 131 11 – | 242 19 10 | ,, | | 54 – – |
| 0 | 20 | 58 16 – | 294 15 9 | ,, | | 65 10 – |
| 1 | 27 | 103 19 – | 318 11 8 | ,, | | 71 – – |
| 2 | 19 | 48 10 6 | 413 11 7 | Incumbent | | 74 8 – |
| 3 | 20 | 40 2 8 | 296 14 8 | ,, | | 53 1 – |
| 4 | 67 | Included in No. 10 | – – – | Surveyor | Expenses not returned. | — |
| 5 | 57 | 130 10 3 | 625 3 3 | ,, | | 138 13 – |
| 6 | 32 | 65 2 – | 293 4 5 | Incumbent | | 56 – – |
| 7 | 31 | 63 8 – | 322 16 – | ,, | | 58 14 – |
| 8 | 12 | 30 14 – | 237 3 2 | ,, | | 66 17 – |
| 9 | 27 | 84 12 6 | 284 6 – | Surveyor | | 63 3 – |
| 0 | – | – – – | – – – | – | No return further. | — |
| 1 | 12 | 21 18 – | – – – | Surveyor | Expenses not returned. | — |
| 2 | 25 | 65 10 6 | 145 19 – | ,, | | 33 11 – |
| 3 | 26 | 58 14 – | 172 4 – | ,, | | 38 5 – |
| 4 | 20 | 56 7 – | 164 2 – | ,, | | 36 9 – |
| 5 | – | – – – | – – – | – | No return. | — |
| 6 | 1 | 5 9 6 | 131 18 10 | Incumbent | Has held appointment one year | 114 – – |
| 7 | 27 | 64 – – | 248 7 6 | ,, | | 44 4 – |
| 8 | – | – – – | – – – | – | No return further. | — |
| 9 | – | – – – | – – – | Surveyor | Return incomplete. | — |
| 0 | 37 | 131 8 6 | 591 8 10 | ,, | | 131 8 – |
| 1 | – | – – – | – – – | – | No return. | — |
| 2 | 64 | 155 1 6 | 1,025 1 8 | Incumbent | | 193 5 – |
| 3 | 41 | 93 17 6 | 523 15 1 | ,, | | 97 – – |
| 4 | 41 | 65 8 6 | 537 – 3 | ,, | | 98 – – |
| 5 | – | – – – | – – – | – | No return further. | — |
| 6 | 18 | Included in No. 10 | – – – | Surveyor | Expenses not returned. | — |
| 7 | 29 | – – ditto – | 289 15 7 | Incumbent | | 49 3 – |
| 8 | – | – – – | – – – | – | No return further. | — |
| 9 | 22 | 101 1 6 | 542 2 4 | Incumbent | | 83 17 – |
| 0 | 121 | Included in No. 10 | 1,016 8 9 | ,, | | 169 7 – |
| 1 | 153 | 356 1 6 | 1,024 4 6 | Surveyor | | 227 12 – |
| 2 | 36 | 167 – 6 | 699 8 9 | Incumbent | | 132 14 – |
| 3 | 24 | 90 18 10 | 317 2 7 | ,, | | 60 5 – |
| 4 | 38 | 107 19 – | 581 19 8 | ,, | | 103 18 – |
| 5 | 40 | 64 – – | 592 3 – | Surveyor | This return, made formerly to the rural deans, is now incomplete. Fifty-one orders to inspect have been subsequentiy received. | — |
| 6 | 41 | 285 10 – | 1,111 6 4 | Incumbent | | 269 13 – |
| 7 | 39 | 165 6 – | 854 16 4 | ,, | | 161 11 – |
| 8 | 52 | 187 19 – | 557 9 4 | ,, | | 93 16 – |
| 9 | 46 | 273 6 6 | 743 6 7 | ,, | | 127 1 – |
| 0 | 24 | Included in No. 10 | 202 10 – | Surveyor | | 45 – – |
| 1 | – | – – – | – – – | – | No return further. | — |
| 2 | 17 | 78 3 6 | 351 12 6 | Incumbent | | 69 17 – |
| 3 | 48 | 164 6 6 | 700 10 – | ,, | | 122 10 – |

"Ecclesiastical Dilapidations Act, 1871," till 1st March 1876.

## Appendix, No. 8.

Appendix, No. 8. MEMORANDUM and STATEMENT upon Ecclesiastical Dilapidations Acts, put in by Mr. *Gibbs*.

### CONVOCATION OF CANTERBURY, LOWER HOUSE.

#### Ecclesiastical Dilapidations Act, 1871.

The committee* appointed on 30th April 1874, by direction of his Grace the President, "to inquire into the working of 'The Ecclesiastical Dilapidations Act, 1871,' with a view to an amendment of its provisions," report as follows:—

The committee applied to the archdeacons of the Province of Canterbury requesting them to supply the committee with information respecting the inspections which had been made under the Act, derived either from their own personal knowledge of the facts or from such persons as they knew to be able to impart it.

Many archdeacons of the province have furnished the committee with the names of the benefices in their archdeaconries which have been inspected, and the occasion which gave rise to the inspection, and other information and suggestions.

It appears that of the benefices in these archdeaconries there have been, since the passing of the Act up to about the middle of the year 1875, 1,421 inspected. Of these inspections there were made—

| | |
|---|---|
| 1,102 | on the vacancy of the benefice; |
| 267 | on the request of the incumbent; |
| 36 | on the sequestration of the benefice; |
| 8 | on the complaint of the patron; |
| 4 | on the complaint of the archdeacon; |
| 4 | on the complaint of the rural dean. |
| 1,421 | |

1. Your committee would call attention to the obligation which, by law rests on incumbents to apply the revenues of their benefices in the first instance to keeping the buildings annexed to such benefices in a proper condition. In the light of this law they would examine the working of "The Ecclesiastical Dilapidations Act, 1871," which Act, in their opinion, did not alter the obligation, but only the machinery for rendering the method of enforcing it more speedy and effectual. This obligation, and the reasons for it, as stated by the late Mr. Justice Bailey, may be seen in the report of the cause Wise *v.* Metcalfe, in 10 *Barn. and Cres.* 299. He stated that "the revenues of the benefice are given as a provision, not for the clergyman only, but also for a suitable residence for the clergyman and for the maintenance of the church," and "the revenues of the benefice form the only fund out of which the means of replacing such buildings can arise." In order to exhibit this obligation your committee have reprinted at the end of this Report an Appendix A. to the Report, dated 4th June 1867, presented in that year to convocation, and they have also inserted another Appendix B. from the same source in order to give the most authoritative reply

* The Prolocutor (Dr. Bickersteth).
Archdeacon of Bedford (Mr. Bathurst).
" Berks (Mr. Pott).
" Colchester (Mr. Ady).
" Derby (Dr. Balston).
" Ely (Mr. Emery).
" Montgomery (Mr. Ffoulkes).
" Oakham (Lord A. Compton).
" Sudbury (Mr. Chapman).
" Stow (Mr. Trollope).
Archdeacon Randall.
Mr. Dayman.
Mr. Gibbs (Chairman).
Mr. Hopkins.
Mr. Hinds Howell.
Mr. Joyce.
Mr. Knight.
Mr Lloyd.
Mr. Pigott.
Mr. Sumner.
Mr. David Williams.

reply in their power to the inquiry, which has been frequently made, as to what things are and what things are not "dilapidations."

2. Your committee now proceed to comment upon the matters reported in the replies which have been made to them respecting the working of the Act of 1871, and the alterations which they recommend to be made in that statute with a view to remedy some of the evils complained of in its working. They would remark, however, that many of the cases of apparent hardship appear to your committee to be due to the fact that previous incumbents did not receive or having received did not properly expend the value of the dilapidations when they were admitted to their benefices. The neglect of previous generations causes a hardship to those on whom falls the burden of putting into substantial repair buildings which ought, years before, to have been put into that condition. If, however, the faults of previous incumbents were held to free the one in possession entirely from his liability for dilapidations the church would suffer damage. This ought not to be permitted, and your committee remark that the Governors of Queen Anne's Bounty are, by the Act of 1871, empowered to lend money in such cases. Further suggestions are hereinafter made in help of such benefices.

3. It may perhaps be a fair inference from the silence of many to whom the committee applied for information that they have no complaints to report of the working of the Act. From the replies received by your committee it appears that 267 incumbents have voluntarily availed themselves of the provisions of the Act for repairing the dilapidations during their incumbency. Others, however, have not done this, and for various reasons. It has been supposed that the Act requires a quinquennial inspection. It does not directly require it, except for livings under sequestration. Even after the incumbent has repaired his buildings and obtained a certificate of freedom from liability for dilapidations for five years, it is optional for him to renew that certificate by having an inspection at the end of those five years.

4. Some complain that the amount of fees paid for an inspection is not in proportion to the work done.* These fees are not fixed by the Act, but by the ecclesiastical officers of each diocese, to whom this complaint should be made, as being the persons authorised from time to time to revise and alter the fees; and, although in a few instances the committee have been told that there ought to be a uniform scale of fees throughout the country, yet for the most part their correspondents have stated that they cannot suggest a better way of paying the surveyors than has been provided. Some, indeed, have expressly objected to an uniform scale of fees for the whole country. They believe that instead of preventing complaints it would increase them, and this opinion is supported by the effect of the establishment of a uniform fee to be paid at visitations. In some dioceses the effect of that general rule has been to render it difficult, and sometimes impossible, to collect the fees. Your committee, agreeing with the latter opinion, are happy to find that the two Archbishops and the Lord Chancellor abstained from availing themselves of the provisions of Section 3 of 35 & 36 Vict. c. 96, which empowered them to make one uniform table of fees and charges for all England and Wales, in substitution of those which had been made in the several dioceses under the 10th section of the Ecclesiastical Dilapidations Act, 1871.

5. In many deaneries the clergy suggest that the appointment of the surveyor should be for five years. Your committee recommend that it should always be for a fixed period; and with respect to some complaints against individual surveyors, the committee consider that they should have been made to the bishop who, by the 8th section of the Act of 1871, is empowered to deal with them.

6. Some incumbents hesitate to invite an inspection, because of the supposed want of redress if they think the surveyor's report unfair. The whole cost falls on the objector; and it is thought that the bishop, whose judgment is final, has no power by the Act to do more than confirm the opinion of the lawyer or second surveyor whom his lordship may consult. Your committee would remind the House that the Act in naming the bishop as the ecclesiastical officer to put its provisions into operation did not accord with the resolutions of the House when the report of its committee on ecclesiastical dilapidations, dated 4th June 1867, was discussed. The House then desired that the archdeacon should act in this respect and not the bishop, but when the Bill was introduced into Parliament it was found that the word bishop had been substituted for archdeacon. Your committee consider that this alteration was a mistake, and recommend that the House should use its influence to obtain its correction, so that henceforth the bishop may be relieved of this additional secular work, and the archdeacon, to whose office it more properly belongs, be appointed to perform it. Moreover, whenever the Act has provided that the bishop shall do any duty under it, it has practically put the business into the hands of the bishop's secretary, and required a fee to be paid to him by the clergy. If done by the archdeacon this work would be free of cost to the clergy. Hence, any objection to a surveyor's report would be made

* Your committee remark that it is often forgotten that the method provided by this Act really delivers the parochial clergy from the burden of heavy expenses to which they were always liable before this Act was passed. In former times the fees usually payable by *both* parties to the surveyors employed (generally *two*, and sometimes *three*) were 5 per cent. on the total amount, together with expenses, but now the surveyor's charges are strictly limited by the diocesan table of fees.

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made to the archdeacon, who might be empowered to issue a commission to a rural dean of the diocese, and two or three other persons, all of whom should be members of the Church of England, and one of them at least a layman and a justice of the peace for the county in which the benefice is situated, to consider the surveyor's report and the objections made thereto, and report to the archdeacon their opinion as to the order which he issues in relation to the benefice in question.

7. Your committee also recommend that the costs of, and occasioned by, any objection to a surveyor's report, should be in the discretion of the judge to whom the appeal lies, and not be, as provided by the Act of 1871, in every case defrayed by the objector, such provision being in the opinion of your committee not calculated to secure justice being done.

8. It is also thought that the Act makes an unfair distinction in requiring the parochial clergy to have the surveyor whom the bishop orders to inspect, while it allows the bishops and cathedral dignitaries (Section 25) for their buildings to employ any surveyor approved for the purpose by the Ecclesiastical Commissioners. The objectors think that the parochial incumbents should be permitted to select any one of the surveyors appointed for their diocese, and that there should be such a number of diocesan surveyors as to enable an incumbent to have his benefice inspected by one who, by residing near to it, would not have to charge heavy travelling expenses. The Act is not to blame for heavy travelling expenses, as it allows those who appoint the surveyors for the diocese to appoint as many surveyors as they please. But to relieve this alleged grievance in the matter of choice your committee recommend that, in the event of an incumbent requesting an inspection of his benefice by the surveyor, he be allowed to nominate any one of the surveyors appointed for his diocese, to whom the order to inspect shall be sent; and, in the event of a vacancy, if the incoming incumbent and outgoing incumbent, or his representatives, jointly nominate one of the surveyors of the diocese to make the inspection, the archdeacon shall issue his order to such surveyor; but, if they do not so jointly nominate, the archdeacon shall issue his order to such one of the surveyors of the diocese as he may be pleased to select.

9. In some dioceses the bishop issues his order to the surveyor to inspect the buildings of every vacant benefice, as the Act seems to require; but in cases where there are no buildings to be inspected, your committee think that the incumbent might be spared the costs of the surveyor's visit. These might be avoided, if a provision were introduced into the Act authorising the archdeacon, upon application (previously to ordering an inspection by the surveyor), to issue a commission to ascertain if there are any buildings. This your committee are informed is done in one diocese, the following being the form employed as the return to a commission in such cases:—

"To the Right Reverend ——— Lord Bishop of ———. We, the undersigned, ——— vicar of ——— and ——— and ——— churchwardens of the parish and parish church of ——— in the county of ——— and diocese of ——— lately vacant by the ——— of ——— the last incumbent there, having since the vacancy inspected the glebe lands of the said parish, do certify to your lordship that the gates and fences thereof are in good repair, and that there are no buildings belonging to the said benefice. Witness our hands this ——— day of ———."

10. There is one class of cases where the expenses of inspection press heavily: viz., the benefices of which the income is small, and that small income derived from lands situated at great distances from each other or from the benefice. By the 5th section of the Act those lands and their fences, and the buildings (if any) on them, are deemed to be in the same diocese as the benefice; and yet, in point of fact, they are sometimes locally situate in another, and at a greater distance. The costs of the inspection are thereby increased; and when, which sometimes happens, the Governors of Queen Anne's Bounty refuse to lend money to the incumbents of these poor benefices, the case becomes very hard. Your committee therefore recommend that the archdeacon be empowered to dispense, if he see fit, with the services of the diocesan surveyor for inspecting land belonging to, but at a distance from, the benefice where there is no building other than fences on such land, and to authorise the rural dean, or some incumbent of the rural deanery in which such land is situate, to inspect and report upon the state of its fences and gates; and, on these being repaired, if repairs are needed, to certify to the archdeacon the completion thereof and the payment of their cost by the incumbent. Your committee also recommend that with respect to benefices whose endowment, exclusive of fees, is under £ a year, to permit the archdeacon not to order the surveyor to inspect, unless after visiting by his commissary *pro hac vice* the benefice and its buildings he should deem the surveyor's inspection and report of the same to be necessary. Nevertheless in all of these cases if the new incumbent claims an inspection by the diocesan surveyor, he should be allowed to have one.

11. On the subject of the cost of surveyors' inspections and reports, the committee have been informed that on a vacancy the surveyor of one diocese charges the old incumbent with these expenses. The committee consider that such practice is not in accordance with the 48th section of the Act. But it appears that the point is at least held to be doubtful, and hence it may be well in an Amendment Act to provide who is to pay these expenses; and the committee think that, whenever the surveyor reports that a sum is due from the late incumbent for repairs, one moiety of the expenses of the surveyor in making such inspection and report should be charged to the late incumbent or his representatives; and that in the event of there being no assets, and only in such event, this moiety should be defrayed by

by the Bounty Board and made a charge on the revenues of the benefice. And with respect to all benefices under 200*l.* having buildings to be inspected, your committee recommend that all the fees and charges payable under the Ecclesiastical Dilapidations, Act, 1871, for inspection and report on the occasion of a vacancy, should be defrayed by the Governors of Queen Anne's Bounty.

12. In the event of the benefice becoming vacant before all the works which had been required by the order have been completed, your committee recommend that the Act be so amended as that no inspection be made in consequence of such vacancy, but that the works be carried on to completion as if such vacancy had not occurred; and that Section 29 be altered in accordance with this recommendation; and also that the latter part of Section 24, from and inclusive of the words "subject nevertheless" to the end of the section, be repealed.

13. Your committee have been informed that the provisions of the Act are capable of being used in a manner which is injurious to new incumbents. This injury may be described as follows: An incumbent, after having held a benefice for several years, during which he did nothing to repair and uphold his buildings, contemplates resignation. But, before resigning, he requests inspection by the surveyor, and does all the work required of him, and pays for it by money borrowed on security of the revenues of the benefice. Then, after obtaining a certificate which frees him from liability to any claim for dilapidation, he resigns the benefice, and the new incumbent has to repay the borrowed money by annual instalments out of the income he receives from the benefice. With a view to prevent the possibility of such a proceeding, your committee recommend that the law should require the bishop before he allows an incumbent to resign his benefice to satisfy himself that that incumbent has paid off any mortgage of the revenues of his benefice which he may have entered into under the provisions of the Ecclesiastical Dilapidations Act, 1871, with the Governors of Queen Anne's Bounty, or any other person or persons within years previous to his application for permission to resign his benefice; and, if the successor of such incumbent in the resigned benefice shall be able to prove that such incumbent left such a debt unpaid and secured on the revenues of his benefice, such retired incumbent or his representatives shall be liable to pay the same to the existing incumbent of the benefice, such payment to be enforced, if necessary, by action in court of law as a debt due.

14. Another case of hardship for which the Act does not provide a remedy, is the burden occasioned by gradually increasing waste or inevitable decay. No provision has been made to meet such decay through several incumbencies, but at length the old building must be replaced by a new one, and the whole cost has to be defrayed by the person who holds the benefice when the time arrives for this necessary renewal. He may have held the benefice but a few years, yet a complaint made by the patron or others may throw upon him the whole cost of rebuilding the premises. Your committee believe that the difference between the estimates of surveyors before the Act of 1871, as well as under its provisions, may, to a great extent, be accounted for by the different interpretations which they have put upon the decison given in the case of Wise *v.* Metcalfe. Some surveyors appear to consider that as every house is always running towards decay, and has run more towards it in proportion to the time since it was erected, therefore an increased sum ought to be paid by each successive outgoing incumbent to meet this increasing, though perhaps unspecifiable, dilapidation. Consequently, in estimating the value of the dilapidations, they include an amount which they think is due to insensible decay. Others, however, estimate only the cost of repairing those defects which are perceptible and capable of immediate reparation. Your committee are of opinion that the latter procedure is what the Act of 1871 intends to be carried out, for it requires the dilapidations to be "specified in detail" and made good within a fixed time. In expressing this opinion your committee would not be understood as saying that in this respect the law is not defective. On the contrary, they recommend that further provision be made in the Act under which insensible waste may be estimated and remedied. For this purpose they suggest a system similar to that of fire insurance, the premiums being received, as tenths are, by the Bounty Office, and placed to the dilapidation account of the benefice, so as to accumulate towards a fund for rebuilding the premises when necessary. It might be sufficient if the Governors of Queen Anne's Bounty were empowered to make rules and orders upon this branch of the business, which rules and orders, when sanctioned by the Queen in Council, should have the force of law.

15. Your committee would call attention to Sections 58 and 59 of the Act of 1871, as capable, when amended, of securing a great relief to incumbents from claims for dilapidations. If all future leases of ecclesiastical property, whether houses or lands, were approved by the diocesan surveyor, and contained a covenant to secure the right of entry for the surveyor to inspect the property, and were so drawn as to place the tenant under precisely the same obligations to uphold and repair as the incumbent is, then, if the said leases were made with the consents required by law, there would be no claim except against the tenant. Such a lease, moreover, would not be affected by a change of incumbent; and at its expiration the claims for dilapidations (if any) would lie against the tenant. Your committee recommend, therefore, that Sections 58 and 59 be so amended as to secure this important result.

16. Your committee would remark that, in their opinion, it would help to lessen the burden caused by the claims for dilapidations if the incumbent promoted the growth of

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timber on the glebe. For, in settling the respective claims between an out-going and incoming incumbent, such trees might be an important item of the calculation. By the 28th Hen. VIII., c. 11, s. 6, "Growing crops, and crops reaped but not yet carried off the land, belonging to the late incumbent;" also in the case of Percival *v.* Cook (2 C. &. P. 460), the Court said, "If the present incumbent has repaired with timber which grew on the glebe, the executors of the late incumbent are entitled to be allowed for the value of such timber in the estimate of dilapidations due from them." Your committee recommend that, under proper limitations, the timber or timber-like trees on the land belonging to a benefice be always, when the benefice is vacated, valued, and that the sum estimated as due to the late incumbent be a set-off against the claim on him for dilapidations, and that the surplus, if any, be a debt due to him or his representatives from the new incumbent.

17. Your committee have been informed that in some cases there have been expenses incurred, as well as difficulties experienced, by the surveyors in ascertaining the property belonging to the benefice which they were to inspect. This has been caused by the absence of a terrier for their information and guidance. One surveyor has stated "that owing to the neglect of terriers, a neglect which has been increasing of late years, many possessions of the Church have been lost." Another said, "In my opinion an efficient terrier, with map or plan, should be provided for each benefice, setting forth the extent of the glebe." Another surveyor said, "I was enabled to recover some Bounty land that had been alienated 58 years by luckily procuring the evidence of old people, who died very soon afterwards. If there had been a terrier this loss, or possible loss, would not have occurred." Some members of your committee can give like testimony. Moreover, without having terriers to consult, it is possible that the surveyor may fail to include in his report some building which an incumbent may have removed years previously, and, if so, the opportunity of recovering such building or its value to the benefice will probably be lost. The subject of terriers, which was commended to the consideration of Convocation by Royal Letters of Business in the reigns of Anne and George I., should, your committe think, be satisfactorily dealt with for the Church's benefit in any Act amending "The Ecclesiastical Dilapidations Act, 1871," and for that purpose it should be the duty of the surveyor, when he inspects a benefice, to make a terrier if he finds none, or to examine, and if need be amend it, if he finds one; and the incumbent and churchwardens should (*see* Canon 87) verify and record such new or amended terrier, and the surveyor should be empowered to copy without fee any terrier in the bishop's registry, in the parish chest, or in the custody of any parish official, and such terrier should include the boundary fence belonging to the glebe.

18. It is very generally admitted that the Act is defective in not providing for the valuation of the buildings for fire insurances, and for the recording of such valuations in the office of Queen Anne's Bounty. The committee recommend that a fee for making such valuation be added to those which the Act allows to be charged; and that when an inspection is made, to certify the completion of the work which had been ordered on the vacancy of the benefice, it be the duty of the surveyor to value the premises for insurance against damage by fire, that a statement of such valuation be sent to the Governors, and that the same be a sufficient basis of insurance during the continuance of the then new incumbent; and, inasmuch as the Act requires such insurance to "be effected in the joint names of the incumbent and the Governors," which Governors may demand a receipt for the premium from the insurance office, the committee recommend that so much of the 55th section of the Act be repealed as requires the receipt to be exhibited at the visitation, and thereby the clergy will be saved the fee charged for that exhibit.

19. The committee now pass to a question of great practical difficulty, which the working of the Act has brought forcibly into notice: viz., What is to be done with benefices so small in value that the Governors will not lend money on mortgage of the income, and where the new incumbent finds the estate of his predecessor insolvent? "I have two grievous cases," writes an archdeacon to the committee. "In each case an incumbent vacates a living, one by death, the other by resignation. The first dies insolvent, the second is hopelessly insolvent. Two *poor* men succeed. Neither of them can get one penny. But each of them is now liable for the repairs of their dilapidated ecclesiastical buildings."

Your committee consider that there must be some limit to an incumbent's liability in these matters. Dilapidations is only a personal charge, so far as he is the holder of the benefice. His liability, therefore, should be so limited to the amount which he receives or has received out of the revenues of the benefice. The liability of the out-going incumbent rests on the presumption that he had received the money whilst he held the benefice. Your committee consider that the liability should be thus defined by law, otherwise the Dilapidation Act will render it impossible for any man with prudence to accept a benefice of small value.

An incumbent of a benefice under 200 *l.* a year in value, writing to the committee (and his case is a sample of many), said, "The Governors will not make a loan; my living is too small to give security for repayment. They demand of me 290 *l.*, the dilapidation award made by the diocesan surveyor, and which ought to have been paid by the late incumbent's family, who plead no 'assets.'"

A diocesan surveyor wrote respecting three benefices—"These were cases of hardship; the late incumbents dying intestate and insolvent, and the Governors refusing to give any assistance by way of loan."

This

This grievance is additional to that which these new incumbents exeprience from the fees to be paid for working "The Dilapidations Act, 1871." These are cases which call loudly for help. Can any means of helping them be provided?

It has been suggested that there should be an obligation to insure their lives on the part of each incumbent inducted to a living; and, in order to prevent the loss of the policy in the event of his becoming insolvent, he should assign the policy to the Governors of Queen Anne's Bounty, who should place it to the credit of the dilapidation account of that benefice, and, if necessary keep it in force by paying the annual premium. At the death of the insurer there would probably be a sum of money available for repaying the Governors the premium they had advanced, and afterwards for meeting the claim for dilapidations. But, if no office would accept the proposed life for insurance, this method could not be adopted.

20. There are two classes of poor livings for whose sake your committee recommend that legal provision be made to empower the Governors to render pecuniary assistance when the buildings require reparation. One class consists of those benefices for the augmentation of which the Governors have already made grants, which grants, not having yet been invested in land, are held by the Governors, who allow interest on the same to the incumbents. Your committee think that the Legislature might empower the Governors, out of these monies, to make loans for the reparation of the buildings of the benefice. The other class consists of those poor livings to which such grants have not been made by the Governors. If money were given for repairing the buildings of those benefices, the committee think that the Governors should be empowered to meet such gifts out of their own income, and to place the money so raised to the dilapidation account of the benefice.

After making all these suggestions, in the hope that they may serve to assist to lessen the burdens which fall on poor benefices, your committee will hereinafter state another way in which probably assistance may be supplied in aid of the "dilapidation account" of poor benefices.

21. As a further remedy for this great evil the committee may be allowed to call attention to a report now waiting to be discussed by the Lower House from the committee on first fruits and tenths, in which is recommended the establishment in each diocese of a diocesan fee fund. If such a fund were created, its managers might be empowered to pay the surveyors by salary out of the fee fund of the diocese, and then the fee for inspecting such poor benefices might probably be lessened.

22. Whether the Church of England, by means of the Governors of Queen Anne's Bounty, should become its own fire insurance office, is another branch of the inquiry now before your committee. In most of the replies made to their inquiries this proposal was approved, some indeed approved it "subject to no new fees being called into existence," but others gave it their unconditional support. This proposal was explained and recommended in the Second Report of the Committee on Ecclesiastical Dilapidations, which was presented to the Lower House in February 1872, and it was proposed to Parliament in a Bill introduced into the House of Lords that same year, but which, after being amended by a Select Committee of their Lordships, proceeded no further. Your committee recommend the Lower House to use use its influence to secure its reintroduction into Parliament. The profits on fire assurances should be applied in aid of the dilapidation account of the several benefices in proportion to the amount of the several premiums received from those benefices.

23. In the Second Report, above referred to, it was stated, "We recommend that the provisions of the Act" (viz., the Ecclesiastical Dilapidations Act, 1871) "be rendered applicable to those lay rectors, impropriators, or others, on whom rests the obligation of repairing the chancel or other portion of the church." In all the communications made to your committee with a view to an amendment of the Act such extension of its provisions has been approved. How it can or should be done is a question upon which your committee feel bound to offer some suggestions. Respecting the obligation of the impropriator to repair the chancel there is probably no doubt, but how to enforce it is a matter on which your committee venture no opinion. Soon after the Restoration the question came before the courts of law. In the 22 Car. II. a case occurred where the impropriate tithes were sequestered. This case is reported in 2 Vent. 35. The court gave no opinion as to the matter of the law in question, but "did decline that there could be no sequestration, for being a lay fee the impropriation was out of the jurisdiction of the Ecclesiastical Court; also that the *whole* ought not to be sequestered but only part."

In another case (Walwyn *v.* Awberry and another) which happened in Trinity Term, 29 Car. II., and is recorded in 2 Mod. 257, the judgment of the court, as specified in the margin of the record, was that "tithes shall not be sequestered for repair of chancel." But the judgment was only given on the pleas, not on the matter of the cause. It was held, (1.) That the defendants (the churchwardens) should have averred that the chancel was out of repair; and (2.) That no more corn (belonging to the impropriator) had been taken than what was sufficient for the repairs.

A third case happened in the same year as the last. It is an anonymous case reported in 3 Keb. 829, in these words: "The Spiritual Court may grant sequestration upon impropriate parsonage for not repairing the chancel. Query, if they can do it for not repairing the parsonage house? But clearly they may excommunicate the impropriator for both, notwithstanding the Statute of Dissolution, 37 Hen. VIII., c. 21, s. 3, &c."

Dr. Gibson, as quoted by Dr. Phillimore, "observes that impropriations before they became lay fees were undoubtedly liable to sequestration, and that the king was to enjoy them

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in the same manner as the religious had done." "The general saving," he adds, "in 31 Hen. VIII., c. 13, may be well extended to a saving of the right of the ordinary in this particular, which right he undoubtedly had by the law and practice of the Church, which said right is not abrogated by any statute whatsoever."

24. In the opinion of your committee provision should be made for ascertaining, when necessary, on whom the obligation rests for upholding the chancel or other particular part of the church. The question is obviously one for a court of law, but the Act might authorise certain persons, such as the chancellor of the diocese, the archdeacon, or the churchwardens of the parish, to inspect the "Valuation List" and the overseers' poor's rate book, to ascertain the names of the owners of impropriate tithe or other property (if any) charged with the repairs in question, and to initiate proceedings in a court of law to determine the person liable to do the repairs.

25. Your committee recommend that legal provision be made for enforcing the repair of any dilapidations which may be discovered in the chancel by the surveyor when ordered by the archdeacon to inspect the same. In his report to the archdeacon on this branch of his work, the surveyor should specify in detail the works needed to be done, and then the bishop, as your committee think, should be authorised to give notice to the person or persons on whom lies the obligation to do the works; and if, after a specified time, he or they neglect to do the same, the bishop should be empowered to sequester the revenues of the property in question until he has received therefrom an amount sufficient to pay the cost of the works, together with the expenses incurred in the business; and in such a case the bishop should be further authorised to have the required works executed under the direction and to the satisfaction of the diocesan surveyor.

26. There is a class of cases where the law of dilapidations seems to press heavily and unjustly, for which some provision might be made by the Legislature, viz.: cases where an incumbent has laid out on the parsonage house or other buildings on the benefice a large amount of his own money, and thereby has been a benefactor to the benefice; and yet when he vacates the benefice no account is taken of his benefaction. Several of such cases have been represented to your committee, who will report one as a sample. The benefice had a very indifferent parsonage. The incumbent expended 1,200 *l.* of his own money in making it "one of the best and most comfortable parsonages in the diocese." After a few years he resigned the benefice, and the surveyor assessed the dilapidations for which he was liable at nearly 200 *l.* Your committee consider that in equity he should not be required to pay this money, but that it should be made a charge on the revenues of the benefice, and thereby it would be paid by the succeeding incumbent, who would enjoy the more comfortable house with which the benefice had been enriched. Your committee do not say that the surveyor was in fault, but they consider that the bishop, or the Commissioners to whom the bishop referred the matter, should be allowed to take the facts of such a case into consideration, and if they are of opinion that the benefice has been augmented, and not over-housed, and thereby burdened by the outgoing incumbent, they should have the power of exonerating him from the payment of the charge for dilapidations. In strict equity your committee think that discretionary powers should be given to the archdeacon, acting under the advice of his Commissioners, in computing the money (if any) to be paid in such cases for dilapidations.

27. Your committee have been anxious, if possible, to suggest a way for lessening the pecuniary pressure which dilapidations cause to one or both of the incumbents on the occasion of a vacancy in the benefice. There is always an interval during which the benefice is without an incumbent. There is generally a sequestrator appointed, who is authorised to receive the revenues and, out of them, to pay for supplying the spiritual duties of the charge, and then to hold the balance in trust to hand the same over to the new incumbent. Your committee think that the relief they seek might to some extent be found by means of such balance, whenever the new incumbent is in possession of another benefice until his admission to the new one. In this interval he is in possession of the revenues of one benefice, and hence it would be in accordance with the spirit of the Statutes against pluralities if he did not receive at the same time any of the revenues of the second benefice. In such cases, therefore, your committee suggest that the sequestrator should be required to repay to the new incumbent, if the money in his hand is sufficient, the fees paid for institution and induction, and the first fruits, and then the overplus (if any) remaining in his hands should be paid to the treasurer of Queen Anne's Bounty, to be by him placed to the dilapidations account of the benefice. Your committee would not except from this proposal those benefices which have not any buildings annexed to them. But they recommend that the interim revenues of such benefices be paid to the Governors of Queen Anne's Bounty to a general dilapidation account in aid of all poor livings (say livings of 200 *l.* a year and under). The interim income of cathedral offices, to which there is no house of residence annexed, might also be applied to the same purpose, viz., the formation or augmentation of the dilapidation account of such poor benefices. This fund should be at the disposal of the Governors, first to accumulate for the purpose of building a house for the benefice, where a house is wanted; and where a house is not wanted, then for the maintenance of the buildings annexed to such poor benefices, on the application of the incumbent, with the approval of the bishop of the diocese in which the benefice is situated.

28. Under the Act of 1871 the amount which the outgoing incumbent, or his representative

tives, should pay for dilapidations is made to be recoverable (if possible) by the new incumbent. For many reasons, which it is not necessary to mention, this is objectionable. Your committee recommend that this amount should be made a debt due to the dilapidations account of the benefice, and be recoverable for that account (if possible) by the Treasurer of the Governors of Queen Anne's Bounty.

29. Complaints have been made that when money has been paid into a dilapidation account and has not been demanded for several years, no interest has been allowed on the deposit. Your committee would remind complainants that the expenses of management have to be defrayed by the Governors, and that the interest of money left in their hands is the chief, if not the only, source whence these expenses can be met. Still your committee would express their opinion that one year's interest on any such sum would provide the cost of management, and that after the first year such sum should be allowed to accumulate at 3 per cent. for the benefit of the dilapidation account of the benefice.

30. Your committee have inserted in an Appendix C. the alterations which they recommend to be made in several clauses of the Act of 1871; and they recommend that a Bill be prepared to be introduced into Parliament to re-enact the provisions of the Act of 1871, altered as in Appendix C., and at the same time to give legal sanction to the other recommendations stated in this report. On the passing of such Bill the existing Act should become repealed, and the new Act would, as your committee believe, be of much benefit to the Church in maintaining her buildings in such a condition as to secure the residence of her ministers among the people committed to their charge.

Signed by order and in behalf of the committee by

*Michael Gibbs*, Chairman,
Proctor for the Diocese of London.

3 May 1876.

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## Appendix (A.)

The Constitution of Othobon, A.D. 1268, directs that the clergy be admonished by their bishops or archdeacons to fulfil this obligation.

The Constitution of Archbishop Mepham, A.D. 1328, directs the diocesan to tax the benefice for the reparation of its buildings.

*See* also Archbishop Edmund's Constitutions, A.D. 1236.

Sir Simon Degge in his "Parson's Councillor," p. 77, and Dr. Ayliffe in his "Parergon," p. 218, declare, that, for permitting dilapidations to accrue, an incumbent is punishable by ecclesiastical censure, by sequestration of his benefice, and also, in the opinion of Lord Coke (3 Institute, 204), by deprivation. John, the Abbot of Westminster, was deprived for waste (*see* Hollingshed, 181). Bishop Gibson (Codex Jur. Eccl. tit. 38) has remarked that "the repairing of dilapidations is in the strictest sense a debt to the Church, and it is the duty of the bishop to see that the Church is no loser by any life occupier of her benefices. The income of a benefice is not primarily for the support of an incumbent and his family, but for the maintenance of the estate whence such income is derived. Hence the reparation, and, if need be, the rebuilding, of the house in which the incumbent is to reside is a first charge on the revenues of the benefice."

Some Acts of Parliament give a penal character, under certain circumstances, to the non-fulfilment of this obligation. By 13th Eliz. c. 10, "fraudulent deeds made by spiritual persons to defeat their successors of remedy for dilapidations" are made "void." The successor in the benefice has remedy against him or them to whom such deeds are made. 57 Geo. 3, c. 99, s. 14, enacts that a non-resident incumbent shall be liable to the penalties of non-residence until the house of residence of his benefice be put into good and sufficient repair, to the satisfaction of the bishop. A similar enactment is contained in 1 & 2 Vict. c. 106, s. 41, where the cost of the surveyor, whom the bishop is empowered to appoint, is to be defrayed out of the revenues of the benefice.

In an action (Jones *v.* Hill) on a case of dilapidations by a successor, the declaration was upon the custom of the realm, and it was held good (*see* iii. *Levinz*, 268). The last-mentioned case is stated in "Viner's Abridgement," where also the following facts are related: "If any ecclesiastical persons do or suffer to be done any dilapidation, they may be punished for the same in the Ecclesiastical Court, and a prohibition will not lie in the case, and the same is good cause of deprivation of their ecclesiastical livings and dignities. But yet for such waste done they may be punished also at common law, if the party sue there" (see *Godbolt*, 258). Dr. Wood, Bishop of Lichfield and Coventry, was suspended by Archbishop Sancroft for dilapidations, and the profits of the bishoprick were sequestered, and the episcopal palace built out of them, A.D. 1687.

Dilapidations of the house of the bishopric is good cause of deprivation (see *Roll. R.* 86, fol. 34, 12 *Jac. in Banco*, Stockman *v.* Whither). "The obligation on the incumbent to keep and leave his dwelling-house, &c., in thorough repair is absolute and unqualified. He is liable not merely for the dilapidations which the premises have sustained during his own incumbency, but for every defect of reparation which may be found at the time the

Appendix, No. 8.

premises are surveyed, whether it accrued at the time of his predecessor or subsequently."—*Bp. Gibson, Cod. tit.* 32, *c.* 3, *p.* 792, *as referred to by Gibbons, in his Treatise on the Law of Dilapidations, p.* 28.

To the above Appendix, taken from the Report, dated 4th June 1867, the committee in May 1876, add as follows:

With a reference to the case of Percival *v.* Cooke (2 C. & P. 460) for their authority, the following words are inserted in Burn's Eccl. Law, and are under the head "Dilapidations:" "The executors of a deceased incumbent are not bound to put the rectory house into a finished state of repair, but are only bound to restore what is actually in decay, and to make such repairs as are absolutely necessary for the preservation of the premises."

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## Appendix (B.)

According to Blackstone, 3 Com. 91, "Dilapidation is the pulling down or suffering the edifices of an ecclesiastical benefice to go into decay, and neglecting to repair them." It comprehends "the committing, or suffering to be committed, any wilful waste upon the glebe, woods, or other inheritance of the Church."

It does not include the neglect to cultivate the glebe lands in a husband-like manner (*see* Bird *v.* Relph, 4 *Barn and Adol.* 826). A building may be taken down and another built in its stead on another part of the glebe, and if the value of the estate be not thereby impaired, the rector will not incur liability, although he did it without a faculty (*see* 13 Huntley *v.* Russell, *Adolphus and Ellis*, 572).

A farm building or cottage built *on* but not *into* the soil may be removed, and a gravel-pit may be opened and gravel taken from it to repair roads by order of the magistrates without the rector incurring liability, but the tenant of the glebe must not sell such gravel. (See *the last-mentioned case.*)

In the case of Knight *v.* Moseley (*Ambler*, 176) a bill was filed in Chancery, and a demurrer overruled, to stay a rector from digging stones, &c., on the glebe, except for the purpose of repairing and improving the rectory.

In the same case it was stated by Lord Hardwicke that a parson cannot open mines, but may work those already opened on his glebe.

In Bird *v.* Relph, the judge stated that land allotted to an incumbent without fences might be so left by him. But, if it came to him in an inclosed and fenced state, he was bound by the common law to keep it so.

In the case of Beck *v.* Rebow (1 *Peere Williams*, 94) the question related to pictures, looking-glasses, hangings, &c., which the plaintiff alleged were as wainscot, and fixed to the freehold of the house. The Lord Keeper declared that they were only matter of ornament and furniture, and not to be taken as part of the house or freehold, but were removable by the lessee.

In the case of Cave *v.* Cave (2 *Vernon*, 508) the Lord Keeper said that, although pictures and glasses generally speaking are part of the personal estate, yet if put up instead of wainscot, or where otherwise wainscot would have been put up, they shall go to to the heir.

In Harlackenden's case (4 *Coke's Reports*, 640) it is declared that wainscot put up with screws shall remain to the freehold against the evasion of using screws instead of nails.

Fences, hedges, gates, &c., are liable to dilapidations (*see* Bird *v.* Relph, 2 *Adolphus and Ellis*, 773).

Papering and painting (except to preserve timber from decay) are not included in dilapidations. Mr. Justice Bayley in giving judgment in the case of Wise *v.* Metcalfe (10 *Barn. and Cres.* 299) said, "The incumbent is bound to maintain the parsonage, if suitable in point of size and other respects to the benefice, and also the chancel, and to keep them in good and substantial repair, restoring and rebuilding, when necessary, according to the original form without addition or modern improvement; that is, he is not bound to supply or maintain anything in the nature of ornament, to which painting (unless necessary to preserve exposed timber from decay) and whitewashing and papering belong."

Rectors are prohibited from cutting trees growing in the churchyard, except for repairs (*see* 35 *Edw. I.* and Knowle *v.* Harvey in 3 *Bulst.* 158; and Rex *v.* Zaker in 3 *Bulst.* 91; *Ayliffe's Parergon*, p. 218).

For repairs, timber growing on the glebe may be used, and dead wood may be cut down (*see* Bp. of Winchester *v.* Walgar, iii. *Swanst.* 493; and Strachy *v.* Francis, ii. *Atk.* 217).

Timber growing on the glebe may be sold, and the money expended for repairing the ecclesiastical buildings (*see* Whither *v.* Dean and Chap. of Winchester, 3 *Mer.* 421).

A parson may lop trees growing in the churchyard, and may mow the herbage there (*see* Line *v.* Harris, 1 *Lee's Judgments*, 146), but he has no right to take away the soil (*see* Bennet *v.* Bonaker, 2 *Hag.* 25).

In the year 1842 the Royal Institute of British Architects appointed a committee to "report as to the usual practice in regard to dilapidations and fixtures, as well civil as ecclesiastical." The Council of the Institute adopted and published their committee's report, in which the judgment of Mr. Justice Bayley in the case of Wise *v.* Metcalfe is specially alluded to. The report states that in case of "buildings having fallen down or their being in so insecure and dangerous a state as not to admit of their being upheld and substantially

tially repaired fit for habitation, the claim 'for dilapidations' will then extend to the value or expense of taking down and rebuilding. With respect to restorations, the liability extends to the expense of replacing with items of their original character and quality all such matters and things as may have been reinstated in an insufficient and improper manner."

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RESOLUTIONS agreed to by the Lower House when this Report came on for Discussion, on 10th and 12th May 1876.

I. THAT the Resolutions appended to the Report of the Committee on Ecclesiastical Dilapidations be now considered.

II. That in the opinion of this House the provisions of "The Ecclesiastical Dilapidations Act, 1871," should be amended and extended in the following manner:—

1. To give increased power to the Governors of Queen Anne's Bounty for making loans to repair dilapidations resulting from the neglect of previous generations (*see* paragraph 2 of this Report).

2. To make the archdeacon instead of the bishop the ecclesiastical officer to put in motion the provisions of the Act, and to authorise him to issue a commission for his assistance (6).

3. To provide that the costs of an objection to the surveyor's report be at the discretion of the judge to whom the appeal lies (7).

4. To allow an incumbent, and also the new incumbent and late incumbent, or his representatives, jointly, to nominate any one of the surveyors of the diocese to make the inspection and report (8).

5. To provide that an inspection by the surveyor shall not be ordered when there are no other things than fences to be inspected, and when the lands belonging to the benefice are situated in another diocese (9 and 10).

6. To provide that, in certain cases, a part of the cost of the inspection and report be a debt due from the late incumbent or his representatives, or be defrayed by the Governors of Queen Anne's Bounty out of money to be advanced by them on the revenues of the benefice (11).

7. To amend Sections 29 and 24, so as to do away with the inspection on a vacancy which occurs before the completion of the work which had been previously ordered (12).

8. To provide that an incumbent shall not resign his benefice until he shall have paid off any debt which he may have contracted, under the provisions of the Ecclesiastical Dilapidations Act, 1871, or any Act amending the same (13).

10. To amend Sections 58 and 59 as to cause any claim for dilapidation at the end of a lease to lie against the tenant (15).

11. To provide that it be the duty of the surveyor, when he inspects a benefice, to examine and amend the terrier, or to make a terrier, if there be none (17).

13. To define by law that an incumbent's liability for dilapidations shall be limited to the net amount which he actually received from the benefice (19).

14. To empower the Governors of Queen Anne's Bounty to render pecuniary assistance to poor livings, under the circumstances described in paragraph 20 of this report (20).

15. To enable the holders of benefices to be their own insurers against damage by fire, by becoming a mutual assurance society, managed by the Governors of Queen Anne's Bounty (22).

16. To extend the provisions of the Act to lay impropriators (23 to 25).

19. To make it the duty of the Governors of Queen Anne's Bounty to recover (if possible) the amount due for dilapidations from the outgoing incumbent or his representatives (28).

20. To require the Governors of Queen Anne's Bounty to allow interest on deposits beyond 100 *l.* made with them under the Dilapidations Act, after the first year from their receipt, at the rate of 3 per cent. per annum; and to place such interest to the credit of the dilapidations account of the benefice (29).

III. That the prolocutor be requested to convey a copy of this Report and the resolutions thereon, agreed to by this House, to the Upper House, with a humble request that his Grace the President, and their Lordships the Bishops, will use their efforts in Parliament to obtain an amendment of the law in accordance therewith.

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# I N D E X.

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A

*ACT OF* 1871:

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Argument that the principle of the present Act is sound; namely, that the incumbent is the tenant of the church, *Bishop of Peterborough* 1360—Important respects in which the Act fails to give complete effect to its own principle, the result being that in different cases it is either unjust to the incumbent or injurious to the benefice, and is needlessly vexatious in its operation, *ib.* 1360. 1379.

Preparation by witness of a Bill embodying all his suggestions for the amendment of the present Act; enumeration of these, *Waller* 1529–1532. 1541——Opinion that the Act works great injustice in numerous instances, many of the clergy being greatly dissatisfied with it, *Tristram* 1559–1563.

Particulars in connection with a meeting convened by witness in January 1875, at which a clergyman attended from each diocese in the Province of York, and at which sundry amendments were suggested in the Act of 1871; no suggestions were made for a departure from the system of diocesan surveyors, *Archbishop of York* 1751, 1752——Explanation that witness is not responsible for the provisions of the Act, though he brought in the Bill in the House of Lords, *ib.* 1830——Main object of the Act to secure a complete valuation of dilapidations, and a proper application of the money. *ib.* 1831——Belief that the great majority of the clergy do not wish for a repeal of the Act, and that up to a certain point the measure has been effectual, *ib.* 1832. 1881. 1884.

Grounds for the conclusion that the majority of the clergy are satisfied with the working of the Act, *Hills* 2261. 2348–2352; *Barker* 2534. 2565; *Chancellor* 2756–2759.

Opinion that the Act of 1871 is not efficiently administered, the practice under the Act being very different in different dioceses, *Aston* 2813, 2814. 2847.

Views of the Bishop of Exeter to the effect that the present Act operates with severity in the case of some incumbents, instituted under the former law, and that they have a good claim for relief, *App.* 206, 207.

Summary by the Committee of the grounds of complaint against the Act, *Rep.* v——Conclusion that the Act has, in many respects, failed to accomplish the objects for which it was enacted, and that certain amendments should take place with the least possible delay, *ib.* vi, vii.

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*Aged Incumbents.* Reasons for the age of the incumbent being an important element in the consideration whether a loan for dilapidations should be made by Queen Anne's Bounty Board, *Aston* 128–132. 306–314——Approval of the course pursued by the Bounty Board in limiting the time for repayment of loans, in the case of aged incumbents; case in point, *Archbishop of York* 1725.

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*ANNUAL CHARGE (INSURANCE FOR REPAIRS):*

1. *Concurrence of Evidence in favour of an Annual Payment by each Living, in order to provide a Dilapidations Fund, to be managed by Queen Anne's Bounty.*
2. *Difficulties in the detailed application of this Scheme; approval otherwise.*
3. *Conclusion of the Committee, favourable to the Scheme.*

1. *Concurrence of Evidence in favour of an Annual Payment by each Living, in order to provide a Dilapidations Fund, to be managed by Queen Anne's Bounty:*

Suggestions with a view to providing for dilapidations by an annual payment or insurance; scheme proposed by witness to this effect in 1869; *Aston* 45–49, 2873–2881 —— Great improvement upon the present system if there were an annual charge upon each living for repairs, according to the state of the buildings at the commencement of the incumbency, *ib.* 266–269. 330–333——Grounds for the conclusion that Queen Anne's Bounty Board could conveniently and efficiently administer the proposed system of insurance not only for repairs but for fire, *ib.* 266–268. 2818–2829. 2844–2854. 2887, 2888.

Approval of a plan whereby parsonages might be insured for repairs, the insurance to date from the commencement of the incumbency; witness, however, has not considered this scheme in detail, *Mountfield* 524, 525. 548, 549——Advocacy of a system of insurance in advance in order to provide a dilapidations fund; suggestion hereon that the insurance money for repairs as well as for fire be paid to Queen Anne's Bounty, *Wrangham* 762–766. 779–782.

Recommendation by some incumbents in (letters to the Chairman of the Committee) that a small sum be paid annually into a common fund, out of which what are called landlord's repairs should be executed, *Bull* 904.

Memorandum submitted in elucidation of witness' scheme for abolishing the present system of dilapidations, and for substituting a fixed annual charge upon each benefice, payable to Queen Anne's Bounty Board, who should thenceforth undertake the entire repair, as well as the insurance, of glebe houses, *Bishop of Peterborough* 1359, 1360——Alternative proposal for payment of the proposed charge to a Diocesan Dilapidations Board; preference, however, for the action of Bounty Board, *ib.* 1360. 1452.

Suggestion that under the foregoing scheme the surveyors should be paid by salary, and that there should be a periodical survey of all glebe houses in order to fix the annual charge in each case for repairs, *Bishop of Peterborough* 1360——Suggestion also that the annual payment or rent by the incumbent should be either in the form of an *ad valorem* rate, or should be fixed periodically by the diocesan surveyor, *ib.* 1360. 1403–1416. 1434——Option to be given to existing incumbents to come under witness' scheme, though the measure should be prospective, *ib.* 1360. 1439——Great benefit to the incumbent in paying a small and fixed annual charge, instead of being liable for a large and indefinite amount on vacancy, *ib.* 1360.

Distinction between a system of insurance and the fixed annual charge proposed by witness; explanation hereon that the charge should be settled periodically, and not when there is a fresh occupation, nor with any reference to the age of the incumbent, *Bishop of Peterborough* 1403–1416. 1435–1438——Evidence to the effect that Queen Anne's Bounty Board could conveniently undertake the administration of a new system under which each living should pay to the Board an annual sum for fire insurance and for dilapidations, *ib.* 1425–1430. 1450–1462. 1491–1500——Difficulty in estimating the annual charge upon the benefices in witness' diocese, 1431–1433. 1457——Contemplated assessment of the charge in reference to the valuation of the house, *ib.* 1434.

Proposal that there be an annual charge or insurance, payable by each living, there being a survey of all benefices in order to fix the amount, *Waller* 1517–1532——Contemplated insurance of all livings by the Bounty Board, witness' views being very similar to those of the Bishop of Peterborough on this point, *ib.* 1528–1532—— Suggestion that every incumbent should pay a per-centage upon the value of the buildings, as a means of providing a repairs fund, to be managed by Queen Anne's Bounty, *Phillips* 2574, 2575. 2580. 2592——There should be a separate account in each case, *ib.* 2580. 2592.

2. *Difficulties in the detailed application of this Scheme; approval otherwise:*

Obstacles to an annual insurance against dilapidations, unless in the case of new houses, *Elliot* 620. 623–625. 636–638. 653. 670——Approval of the principle of an insurance for dilapidations as for fire, though there are practical difficulties in the way, *Simons* 894——Difficulties in the way of a general insurance fund for repairs, some parsonages being so substantial as not to require repairs for many years, *Hodges* 967, 968. 1002–1004.

Opinion that a general scheme of insurance against fire and of repairs might be beneficially worked by the Bounty Board, if the Act of 1871 in an amended form were first

in

Report, 1876—*continued.*

*ANNUAL CHARGE* (*INSURANCE FOR REPAIRS*)—continued.

2. *Difficulties in the detailed application of this Scheme, &c.*—continued.

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3. *Conclusion of the Committee, favourable to the Scheme:*

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*APPEAL:*

1. *Present system of Appeal from the Surveyor's Report; Complaints on the Subject.*
2. *Suggestions for an amended System.*
3. *Costs; Representations on this Score.*

1. *Present system of Appeal from the Surveyor's Report; Complaints on the Subject:*

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*Bayley, Edric.* (Analysis of his Evidence.)—Is a solicitor in London, 1630——Particulars relative to the case of the late Vicar of Cassington (witness' brother), and the hardship involved in his representatives having had to pay a large sum for dilapidations, 1631–1648——Very bad state of Cassington parsonage on the induction of witness' brother in 1869, whereas he could not recover anything from the previous vicar, 1632–1634——Alterations and improvements as regards farm buildings, &c., and large increase of rent from the glebe during the incumbency of witness' brother, 1636, 1637.

Charge of 414 *l.* 9 *s.* assessed for dilapidations in the foregoing case; complaint by witness (as executor), the charge being reduced to 363 *l.* (plus 16 *l.* 12 *s.* 6 *d.* for fees, &c.) on a second survey, 1639–1648——Suggestions that before the surveyor's report is made final there should be a right to bring the case before the chancellor of the diocese, and to cross-examine the surveyor, 1649–1653.

Want of a longer time than a month in which to make objection, 1651——Proposal as to the costs of appeal being borne by Queen Anne's Bounty under certain circumstances, 1652——Expediency of the dilapidations being charged upon the living when the new incumbent cannot recover from the previous one, 1654, 1655. 1658, 1659——Advantage of power in the bishop to sanction, retrospectively, the pulling down of old buildings, 1656–1658.

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*Bishops:*

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Exception taken to the course pursued in altering the draft of the Bill of 1871 by substituting the archbishops and bishops for the archdeacons and rural deans as referees from the surveyor, *Williams* 414–416. 454–456——Insufficient time of the bishops for investigating the questions at issue, so that the matter is generally settled very much by their secretaries, *Wrangham* 683, 684——Inexpediency of the bishops having anything to

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do with the Act, *Simons* 864.——Proposed substitution of the archdeacon for the bishop under the Act, *Hodges* 969, 970; *Phillips* 2570——Feeling of the clergy in witness' neighbourhood that the bishop has too much power under the Act, and has quite enough to do otherwise; it is suggested that the archdeacons be substituted for the bishops, *Simmons* 1160.

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Power of the bishops, by means of sequestration, to secure the completion of cases; different practice of different bishops in the matter, *Aston* 2791——Numerous cases which have not gone through as directed by the Act, and which required or now require the attention of the diocesan, *ib.* 2798–2814——Different practice under the Act in different dioceses, *ib.* 2813, 2814. 2847.

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*Brasted* (*Kent*). Very bad condition of Brasted parsonage and outbuildings in 1864, when witness was appointed; he received 160 *l.* for dilapidations, and spent about 700 *l.*, *Astley* 1202–1212. 1226–1228. 1258, 1259——The living is worth 1,000 *l.* a year gross, *ib.* 1207, 1208——Expenditure of more than 1,200 *l.* by witness in repairs and improvements, exclusive of annual maintenance; he also rebuilt the chancel, *ib.* 1213–1215. 1256, 1257.

Information in detail as to the circumstances under which witness determined in 1874 to bring Brasted under the five years' clause of the Act of 1871, as to the large sum (698 *l.*) at which the surveyor assessed the dilapidations, so called, and as to the subsequent steps taken by witness in carrying out the repairs; grievance involved, *Astley* 1216, *et seq.*——Failure of an application by witness to Queen Anne's Bounty Board for a loan for the repairs, *ib.* 1230, 1231. 1235——Obligation upon witness to make certain repairs and improvements far in advance of the original state of the house; instances of this, *ib.* 1232–1239. 1257–1259. 1271. 1275.

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*Bull, James.* (Analysis of his Evidence.)—Summary by witness, as Secretary to the Chairman of the Committee, of the chief complaints addressed to the latter by clergymen throughout England and Wales relative to the working of the Dilapidations Act of 1871; numerous letters received on the subject, 902–907——Comparative statement submitted (*App.* 164 *et seq.*) showing for each diocese the surveyors' fees and general charges in cases of inspection by order or on vacancy, 908, 909.

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*Canterbury Diocese.* Table of fees to be paid in the diocese of Canterbury to the archbishop's secretary and registrar for work done in pursuance of the Act, *App.* 168——Scale of charges of official surveyors in the diocese, *ib.* 169.

*Carlisle Diocese.* Paper showing the fees payable in this diocese to the surveyor, and to the bishop's secretary and registrar under the Act of 1871; *App.* 177.

*Cassington* (*Oxford*). Particulars relative to the case of the late Vicar of Cassington (witness' brother), and the hardship involved in his representatives having had to pay a large sum for dilapidations, *Bayley* 1631–1648——Very bad state of Cassington parsonage on the induction of witness' brother in 1869, whereas he could not recover anything from the previous vicar, *ib.* 1632–1634.

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*Certificates by Surveyors.* Sufficiency of a certificate by one surveyor or architect that the work has been duly executed, *Aston* 202–205——Grievance in the refusal of the surveyor's certificate in respect of work done by the new incumbent of a certain living in Shropshire; large expenditure over and above the amount of the dilapidations, some items under the latter head having been justly objected to, *Williams* 397–399——Occurrence of some cases in which the new incumbent has paid the money as the repairs have been executed before obtaining the money from Queen Anne's Bounty on witness' certificate, *Hills* 2197–2206——Instance of witness having refused to give a final certificate, the incumbent having spent the money on land other than the glebe land, *ib.* 2207–2215.

Instances of complaint through the official surveyor keeping back the certificates; improvement, through witness, in this respect, *Aston* 2809, 2810——Instances of several certificates by surveyors before very small sums are paid out by the Bounty Board, *ib.* 2836. 2840.

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*Chancellor, Frederick.* (Analysis of his Evidence.)—Is one of the official surveyors for Rochester diocese, 2651——Correction of certain statements by the incumbent of White Roding as to the action of witness in respect of this living, in 1872, when it was under sequestration, 2652 *et seq.*——Payment of the amount for dilapidations at White Roding (396 *l.* 5 *s.*) into Queen Anne's Bounty, it falling upon witness to carry out the repairs; completion of these under contract for 366 *l.*, the balance sufficing to pay his fees and commission, 2655–2657. 2661–2703——Explanation as to witness not having yet certified to the Bounty Board for the withdrawal of the money, 2660. 2679–2691——Application by witness to the sequestrator in the event of there not being enough to pay the fees, &c., after execution of the works, 2693–2703.

Explanation that witness has had no case in Essex in which the dilapidations have been assessed at 400 *l.* in respect of some cottages, 2703, 2704——Circumstances under which a compromise was agreed to between the present incumbent of Felstead and the representatives of the late incumbent, 2705–2707——Information as to the fees and charges of the surveyors in Rochester diocese, 2708–2711.

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*Chancels.* Amendment required in the Act of 1871 as regards the repairs of chancels, and the liability of lay rectors, *Elliot* 595–600. 631; *Bishop of Peterborough* 1421, 1422. 1440–1444; *Waller* 1541; *Archbishop of York* 1777, 1778.

*Chester Diocese.* Paper showing the fees payable in this diocese to the surveyor, and to the bishop's secretary and registrar, under the Act of 1871; *App.* 179, 180.

*Chew Magna* (*Somerset*). Heavy liability in prospect for the vicar of Chew Magna in respect of some dilapidated cottages under copyhold tenure, *Simmons* 1136–1142.

*Chichester Diocese.* Scale of fees payable in this diocese to the surveyor, and to the bishop's secretary and registrar, *App.* 177–179.

*Churchwardens.* Doubt as to the expediency of the churchwardens having any functions in reference to the state of the glebe or parsonage, *Elliot* 593, 594. 626–628—— Suggestion that the churchwarden should take part in reporting to the rural dean on the question of dilapidations, *Ruston* 1076.

*Classification of Dilapidations.* Expediency of dilapidations being divided into two classes, and of wear and tear by time being charged upon the living, *Williams* 409–411—— Proposal that substantial repairs be charged on the living, and that the incumbent be liable only for ordinary wear and tear, *Elliot* 579–581.

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*Clergy (Outgoing and Incoming Incumbents):*

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Summary of the chief complaints addressed to the Chairman of the present Committee by clergymen throughout England and Wales relative to the working of the Dilapidations Act of 1871; numerous letters on the subject, *Bull* 902–907—Numerous complaints made in cases of presentation under the old law, and of avoidance under the new, *ib.* 904—More than 100 letters have been received, and the number is increasing daily, *ib.* 907.

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*Consolidation of Acts.* Expediency of a consolidation of all the statutes relating to dilapidations, *Aston* 50.

*Convocation.* Exception taken to a statement that a Committee of Convocation has been appointed to remodel the Act on account of the clergy being strongly opposed to it, *Hills* 2386.

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Report by the Committee of the Lower House of Convocation of Canterbury, dated 3rd May 1876, upon the working of the Dilapidations Act of 1871; conclusions submitted in detail as to the amendments required, *App.* 210–219——Resolutions agreed to by the Lower House when the foregoing report came on for discussion, on the 10th and 12th May, *ib.* 219.

*Copyholds.* Expediency of copyholders being brought within the jurisdiction of the Dilapidations Act, *Simmons* 1158, 1159. 1170–1184——Statement showing the hardship upon the clergy on account of the difficulty as to dilapidations in the case of copyhold tenures, there being no covenants to repair, *Hippisley* 2043–2045.

*Costs.* See *Appeal*, 3.

*Cradley* (*Worcester*). Explanation as to there having been no charge for dilapidations in respect of witness' incumbency of Cradley under the old Act, *Simons* 854–859.

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*Darrington* (*York*). Allowance of only 18 *l.* for dilapidations at Darrington, on witness' appointment, *Wrangham* 676, 677.

*Definition of Dilapidations:*

Exceptional difficulty in the interpretation of dilapidations; that is, as regards gradual decay, *Aston* 323, 324——Desire of incumbents that there should be a definition of dilapidations, *Elliot* 573, 574. 621, 622——Improvement by adopting he definition in Napier's Act, and by providing that parsonages shall be put into staunch and tenantable order and condition, *Elliot* 573, 574. 621, 622; *Bishop of Peterborough* 1384——Concurrence of the Archbishop of York in the view that dilapidations should be defined by statute, *Wrangham* 756——Want of more definite instructions for the surveyor, *ib.* 768.

Proposed definition of dilapidations by statute, *Simons* 864——Representation made by some incumbents that dilapidations are not sufficiently defined, and that landlord's repairs should be charged upon the living, *Bull* 904.

Concurrence in the view that there should be a definition of dilapidations, instead of surveyors following different principles in different dioceses, *Tristram* 1611–1616.

Suggestion that in any new Act there be a definition of dilapidations in a schedule; reasons for concluding that such definition is now feasible, *Archbishop of York* 1734——Approval of a schedule of dilapidations as a means of facilitating remedy in the event of the surveyor's report being unduly strict or fastidious, *ib.* 1757–1761. 1773–1776——Opinion that the proposed definition or directory schedule of dilapidations may be effectually settled by Parliament, *ib.* 1803–1807.

Explanation of the principles by which the surveyors are guided in inspecting and reporting upon parsonage houses under the Dilapidations Act, *Hills* 2269 *et seq.*——Reference to and approval of a certain definition of dilapidations drawn by a firm of solicitors about twenty-one years ago, *ib.* 2272–2274——Distinction between the question of civil and of ecclesiastical dilapidations, in so far as the instructions are more clearly laid down in the latter case, *ib.* 2299–2302.

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*Deputy Surveyors.* Advantage of the bishop being empowered to appoint a surveyor temporarily, as deputy in the event of illness of the official surveyor, *Hills* 2267, 2268.

*Dry Rot.* Liability of the incumbent for the removal of rotten wood or dry rot, *Hills* 2420–2422.

*Durham Diocese.* Concurrence in the opinion that there should be more than one official surveyor for the diocese of Durham, *Archbishop of York* 1794–1798.

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*Entry to Premises.* Full power of the surveyor as to entry, *Aston* 171–174——Expediency of the surveyor being empowered to enter the premises in spite of the incumbent, *Archbishop of York* 1828, 1829——Want of increased facility of entry to premises by the surveyors, *Hills* 2410–2413.

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*Estimates.* Tendency to excessive estimates in order that the surveyor, if required to do the work, may be on the safe side, *Hodges* 960–965——Power of the new incumbent to ascertain within a month of the surveyor's report whether the amount allowed for dilapidations is sufficient, *Bishop of Peterborough* 1372——Question considered as to the surveyor being liable to carry out the repairs if the incumbent will not undertake to do them for the amount awarded, *ib.* 1373–1378.

Difficulty in certain cases in carrying out the required repairs in the event of the bishop giving a decision which would reduce too much the amount calculated as necessary by the surveyor, *Archbishop of York* 1681–1684.

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*Exchange of Livings.* Proposal that in cases of exchange each clergyman should name a surveyor, and that the two surveyors should visit each benefice together, *Astley* 1264. 1277.

*Execution of Works.* Approval of some increased power in the bishop as to extending the time in which to execute repairs, *Bishop of Peterborough* 1333, 1334——Conclusion as to the bishop having a general power to extend the time named in the surveyor's report for the execution of the required repairs, although the report may have become absolute through the incumbent not having objected, *Archbishop of York* 1675-1680——Advantage of the surveyor determining the time for executing the repairs, *ib.* 1720, 1721.

Reference made in witness' reports to the time in which the required repairs or renewals may be carried out, *Hippisley* 1954-1957——Question considered as to the Act sufficiently providing for the completion of the repairs in the event of the incumbent refusing to go on with the work after paying the money into Queen Anne's Bounty, *ib.* 1993-2000——Settlement by witness of the time for completing the repairs, save in cases of vacancy, where the time is fixed by the Act, *Hills*, 2181, 2182.

*Exemption from Liability.* See *Five Years' Certificates.*

*Exeter, Bishop of.* Conclusion as to the Bishop of Exeter being favourable to a definition and classification of dilapidations, *Elliot* 621, 622.

Memorandum by the Bishop of Exeter upon the working of the Act in his diocese; few complaints by incumbents, though in those instances there appears to have been great hardship, *App.* 206, 207——Sundry suggestions for the amendment of the Act, *ib.*

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Practice previously to 1871 for the outgoing and incoming incumbents to settle between them the amount for which the former was liable, the latter spending the money, *Aston* 33-37; *Hodges* 916-918——Difficulty in estimating the total expenditure in England in respect of dilapidations; reference hereon to the average amount of fees under the Dilapidations Act, *Aston* 334-336. 340-345.

Discretion proposed to be exercised by the clergy in laying out the money; proposed certificate from a body comprising lay as well as clerical members, *Elliot* 582, 383. 589-592——Suggestions relative to the constitution of a commission for deciding whether the survey and the subsequent expenditure had been properly carried out, *ib.* 590-592——Expediency of the clergy being entrusted with the expenditure of the money assessed for dilapidations, without the intervention of Queen Anne's Bounty, *Simons* 865. 874-877: *Hodges* 957-960. 1001. 1011, 1012——Complaint by some incumbents that they are required to pay the money to Queen Anne's Bounty, instead of paying it direct to local men for the repairs, *Bull* 904.

Great defect of the former law in the money having been paid over to the new incumbent without any security or control as to its expenditure, *Bishop of Peterborough* 1290-1293.

*See* also *Assessments.* *Estimates.*

## F.

*Faculties (Removal of Buildings).* Increased facility in the grant of faculties by bishops for the removal of old buildings from glebe; power also of getting rid of unnecessary buildings, *Aston* 356-360.

*Farm Buildings.* Instances of hardship in incumbents having to spend large sums in repairing farm buildings on the glebe, *Bishop of Peterborough* 1369; *Tristram* 1603. 1605.

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*FEES, &c.* (*SURVEYORS AND OTHERS*):

1. *Separate System and Scale of Fees for each Diocese; Question of applying a uniform Scale.*
2. *Liability of Incumbents as to Payment.*
3. *Details relative to the Amount of Fees and other Charges.*
4. *Complaints on the part of Incumbents, with Suggestions for an Amended System.*
5. *Question of Payment of Surveyors by Salary, instead of by Fees.*

1. *Separate System and Scale of Fees for each Diocese; Question of applying a uniform Scale:*

Provision in the Act of 1871 as to the fees being fixed in each diocese by the bishop, archdeacons, and others; that is, for the surveyor and for the bishop's secretary and registrar, *Aston* 95, 96——Uniform scale of fees recommended or authorised under Section 3 of the Act 35 & 36 Vict. c. 96 (in 1872), the powers under this Section having never been acted upon, and having lapsed, *Aston* 97–104; *Rep.* iv.

Lower fees for which the work can be done in some dioceses than in others, *Aston* 285, 286——Approval of one uniform scale of fees for all the dioceses, *Wrangham* 772, 773; *Tristram* 1620, 1621——Expediency of the surveyors' fees varying in different dioceses, rather than of one uniform scale, *Bishop of Peterborough* 1482–1484; *Archbishop of York* 1821.

Explanation as to the Archbishops and Lord Chancellor not having fixed a uniform table of fees for all the dioceses, *Archbishop of York* 1821.

Material variation of the fees and charges in the several dioceses, *Rep.* iv.

2. *Liability of Incumbents as to Payment:*

Improvement if the cost of survey were divided between the outgoing and incoming incumbents, *Wrangham* 774, 775——Liability of the objector for the expense, if a second survey and report be ordered by the bishop, *Bishop of Peterborough* 1315. 1320——Doubt as to the expediency of altering the present system, whereby the incumbent is liable for the expense of a second survey, although it may confirm objections to the first survey, *ib.* 1423, 1424.

Full liability of the new incumbent for the charges of the surveyor, and for the fees to the bishop's secretary and registrar, *Rep.* iv.

3. *Details relative to the Amount of Fees and other Charges:*

Information as to the amount of surveyors' fees: average of 9 *l.* 17 *s.* 2 *d.*, for 76 cases which have passed the Bounty Board for payment, exclusive of average fees of 2 *l.* for the secretaries and registrars, *Aston* 106–110——Belief that in no instance have the fees exceeded the amount of the dilapidations, *ib.* 210–212——Varying practice under Section 11, as to the surveyor charging a commission as architect, *ib.* 239–243. 249–251 Conclusion as to the surveyor not being entitled, under clause 11 of the Act, to receive any commission beyond the fees, *ib.* 279. 293, 294——Items of charge included in the average payment of 12 *l.* for each survey, *ib*, 304, 305.

Statement showing the small receipts of witness' registrar and secretary under the Act of 1871; *Bishop of Peterborough* 1337, 1338——Information also as to the receipts of the three diocesan surveyors, and the average official fees in contested and in uncontested cases, *ib.* 1338–1346——Strong disapproval of the system in some dioceses, whereby the surveyor is paid by a per-centage upon the amount assessed for dilapidations, *ib.* 1347–1353——Fairness of the scale of fees in witness' diocese; he has received no complaints on the subject, *ib.* 1485–1487.

Low scale of the surveyor's fees under the present Act, the distinction of being diocesan surveyor inducing men to undertake the work at less than its market value, *Archbishop of York* 1813–1816——Absence of complaint in respect of the surveyor's charge of 5 per cent. upon the valuations when the work is executed by himself, *ib.* 1869.

Claim of witness (as surveyor in Rochester and London dioceses) to 3 per cent. upon the expenditure in excess of 100 *l.* for dilapidations; explanation as to the work done in respect of this charge, *Hills* 2136. 2147–2156. 2167——Charge of 5 per cent. when witness, as architect, directs the work in sequestration cases; instances of his acting as architect as well as valuer in dilapidation cases, *ib.* 2137–2146.

Further information in detail relative to the fees and charges of witness and the practice as to payment, some incumbents paying much more promptly than others, and some not paying any fees till after the final inspection and certificate, *Hills* 2187–2195. 2216–2236——Information as to the fees and charges in the Rochester diocese, *Chancellor* 2708–2711.

Paper submitted by Mr. James Bull, showing in detail the fees and charges payable to the official surveyors, to the secretaries of the archbishops and bishops, and to the registrars,

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*Fees, &c.* (*Surveyors and Others*)—continued.

3. *Details relative to the Amount of Fees and other Charges*—continued.

registrars, in the different dioceses, *App.* 164 *et seq.*——Abstract of the surveyors' charges in the various dioceses, *ib.* 164, 165.

Abstract of surveyors' returns of surveys made, and the charges thereon, from August 1871 till March 1876; also the net annual earnings of each surveyor, *App.* 208, 209.

4. *Complaints on the part of Incumbents, with Suggestions for an Amended System:*

Illustration in witness' case of the costly operation of the Act of 1871, as regards his liability to fees and other charges, *Williams* 376–379. 391–394. 436–448——Instance, in Montgomeryshire, of the widow of an incumbent having been required to pay certain charges, open to objection, as well as a fee to the bishop's secretary, *ib.* 389, 390——Expediency of the fees being settled in each case with the surveyor, rather than of a Table of Fees being prescribed, *Mountfield* 528–532. 542, 543. 553——Heavy incidence of the surveyor's charges, *Wrangham* 711–714. 737, 738——Exorbitant charges under the Act; especially in the shape of surveyors' fees, *Simons* 863. 865–868. 901.

Complaints made in some dioceses as to the excessive fees and other charges, *Bull* 904——Probable room for revision as regards the fees to the bishop's secretary and registrar, *Hodges* 946–949. 1010——Heavy and uncertain fees payable by the clergy under the present system, and to some extent under the old system, *Simmons* 1163. 1185–1188——Expediency of the fees being fixed absolutely by a per-centage upon the value of the living, and without any reference to the amount of the award, *Astley* 1265–1267——Suggestion that the charge be 1½ per cent. upon the gross income of the living, or 2 per cent. upon the net income, *ib.* 1266.

Proposed abolition of the fees to secretaries and registrars, a salaried clerk being employed for the necessary office business; that is, under the scheme of an annual payment by each benefice towards a dilapidation fund, *Bishop of Peterborough* 1360.

5. *Question of Payment of Surveyors by Salary, instead of by Fees:*

Approval of the payment of the surveyors by fees rather than by salary, *Aston* 283, 284——Reason for the provision in section 10 of the Act, that the surveyor should be paid by fees and not by salary; opinion that payment by fees does not involve any grievance to the clergy, *Archbishop of York* 1668–1674——Expediency of the surveyor being paid for the work done, instead of by salary, *ib.* 1858.

Objection to payment of surveyors by commission; payment only by fees in the diocese of Bath and Wells, *Hippisley* 1989–1992——Willingness of the diocesan surveyors to be paid by salary instead of by fees, *Hills* 2455, 2456.

*Felstead* (*Essex*). Circumstances under which a compromise was agreed to between the present incumbent of Felstead and the representatives of the late incumbent, *Chancellor* 2705–2707.

*Fences, &c.* Several instances cited showing the extreme views taken by different surveyors of the liability under the Act in respect of hedges, fences, &c., *Elliot* 567–572. 632–635—— Sufficient power under section 71 of the Act as to the removal of unnecessary fences and walls, *ib.* 629, 630.

Instance of witness having felt constrained to order the restoration of a gate and a fence, though the place was better without them, and they were eventually omitted, *Hills* 2295——Explanation as regards the late practice in the diocese of York whereby fences were not valued by the surveyor for dilapidations, whilst in other dioceses they have been so valued, *ib.* 2423–2432.

Explanation of the considerations by which witness is guided in ordering the restoration of fences on glebe land; circumstances under which he does not claim for fences, *Barker* 2466–2475——Instance of appeal against a claim by witness for fences; alteration of his report in this case, *ib.* 2483–2486.

*Fire Insurance.* Explanation in connection with the requirements in the Act of 1871, as regards insurance against fire; necessary production of the receipts at visitations, *Aston* 87, 88——Authority of the surveyor as to the mode of laying out the insurance money in the event of fire, *ib.* 154–157.

Neglect by many incumbents of the provision in regard to the production of fire insurance receipts at visitations, *Elliot* 646–652——Undue restriction upon incumbents in its being necessary to insure parsonage houses in the name of Queen Anne's Bounty, *Wrangham* 685. 722–727. 739–742. 749–755.

Vexatious character of the present regulations with regard to insurance and the production of receipts, *Archbishop of York* 1811.

Calculation that if all incumbents were required to insure with the Bounty Board against fire, sufficient profit would accrue to cover the cost of administration of dilapida-

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Resolution of the Lower House of Convocation of Canterbury in favour of enabling incumbents to be their own insurers against damage by fire, by becoming a mutual assurance society, managed by the Governors of Queen Anne's Bounty, *App.* 219.

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*First Fruits and Tenths.* Information in connection with the payments made by the clergy to Queen Anne's Bounty under the head of first fruits and tenths, *Aston* 61–67——Great want of amendment as regards the mode of assessment of first fruits and tenths, *Bishop of Peterborough* 1476–1481.

*Five Years' Certificates.* Calculation that a quinquennial inspection of all the benefices would cost upwards of 30,000 *l.* a year in fees, *Aston* 111, 112——Suggested extension from five to fourteen years, or longer, of the period for which the certificate of exoneration should continue, *ib.* 199, 200——Partial extent to which parsonages and buildings have been surveyed under the 12th section of the Act, *ib.* 346, 347.

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Conclusion as to the clergy getting no real relief under the five years' certificate clause; illustration to this effect, *Simons* 870, 871. 892——Suggestion that where an incumbent invites the operation of the Act he should appoint one surveyor and the bishop another, *Astley* 1264——Specially disadvantageous position of a clergyman who puts himself voluntarily under the Act, *ib.*

Statement to the effect that in cases of survey on request all subsequent proceedings should be optional with the clergyman, instead of compulsory as at present, *Bishop of Peterborough* 1370——Small per-centage of benefices unsold on request owing to the provision as to subsequent proceedings being compulsory, *ib.*

Objection by incumbents to avail themselves extensively of the provision as to five years' certificates on account of the period being too limited, *Hippisley* 1985, 1986——Explanation of witness' principle in assessing dilapidations in voluntary cases; full exemption of the incumbent under the five years' certificate, *Barker* 2549–2564——Total of about 460 voluntary cases under the Act, *Aston* 2789.

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*Fixtures.* Special arrangement proposed as regards fixtures, which should be credited as against dilapidations, *Waller* 1532–1541.

## G.

*Gibbs, The Rev. Michael.* (Analysis of his Evidence.)—Explanations in connexion with a report by a committee of the Lower House of Convocation (of which witness is chairman) with reference to the operation of the Dilapidations Act of 1871, and the amendments required therein, 2619 *et seq.*——Adoption of the report, with some few exceptions, by convocation, 2626–2628. 2635–2639. 2646, 2647.

*Gillingham* (*Kent*). Illustration of the different views of different diocesan surveyors upon the question of dilapidations; much less strict requirements in the case of Gillingham parsonage than of Brasted as regards the lead on the roof of the house, *Astley* 1267–1280.

Explanation in reply to certain objections by Mr. Astley against witness' report in the case of Gillingham; justification of the report in reference to the lead on the roof of the parsonage, though there may have been good grounds for other complaints by Mr. Astley, *Hills* 2310–2323.

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*Glasshouses.* Important decision of Lord Campbell upon the question of the outgoing incumbent being required to repair glasshouses, *Hills* 2094. 2102. 2105-2107.

*Glebe.* Objection to the condition of the glebe land being dealt with by the surveyor *Wrangham* 776-778——Doubt as to the expediency of applying the law of dilapidations to the management of land as well as to buildings and fences, *Archbishop of York* 1856 1857.

Objection on the whole to sales of glebe, with a view to augmentation of livings by the proceeds, *Bishop of Peterborough* 1471-1473——Evidence to the effect that witness strongly disapproves of sales of glebe lands as a rule, but that in certain cases, outlying pieces of glebe might be sold for the augmentation of the livings, and as a means of relief in respect of dilapidations, *Archbishop of York* 1851-1855. 1859-1868——Difficulty apprehended as regards the transfer or sale of outlying glebe lands to the Ecclesiastical Commissioners *ib.* 1859-1865. 1868——Frequent sales of small outlying glebes, where so much as forty or forty-two years' purchase can be obtained, *ib.* 1865-1867.

*Gloucester and Bristol Diocese.* Paper showing the fees payable in the diocese to the surveyor, and to the bishop's secretary and registrar, under the Act of 1871 ; *App.* 186, 187.

*Great Tithes.* Reference to the former alienation of the great tithes, on the dissolution of the religious houses, as first throwing upon vicars the burden of the repairs, *Hodges* 924.

*Greenford* (*Middlesex*). Statement of the circumstances under which witness assessed the repairs at Greenford at about 650 *l.* ; mode of payment of his fees and expenses in this case, *Hills* 2433-2451——Circumstance of witness having ordered that an old pigstye at Greenford should be restored, *ib.* 2433-2436——Satisfaction given to the late incumbent in the foregoing case, *ib.* 2452, 2453.

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*Hannah-cum-Hagnaby and Markby* (*Lincoln*). Obligation upon the incumbent of Hannah-cum-Hagnaby and Markby to pay to Queen Anne's Bounty the sum necessary to restore an old and useless cottage before he was allowed to remove it, *Hebb* 841-846.

*Halford Bridge* (*Warwick*). Strong complaint in regard to the surveyor's report in the case of Halford Bridge, where the dilapidations were assessed at 86 *l.* though witness was most careful to leave everything in good and tenantable repair, *Simons* 862, 863. 867-870——Fear of litigation and expense which deterred witness from appearing in this case, *ib.* 862. 869——Quarrel between witness and his successor at Halford Bridge, owing entirely to the action of the surveyor (J. W. Wilmot), *ib.* 868——Comment upon Mr. Wilmot's report in detail, and upon the trifling things included therein as dilapidations, *ib.* 868-870. 879.

*Hebb, William.* (Analysis of his Evidence.)—Considerable experience of witness, as solicitor at Ross (Hereford) in connection with the Dilapidations Act, 787, 788——Particulars relative to the case of Mr. Edman, who was instituted to the living of Muker, in the diocese of Ripon, in 1864 ; was unable for certain reasons to obtain anything from his predecessor for dilapidations, but was required, on preferment to another living, to pay a sum of 395 *l.* 2 *s.* 10 *d.* to his successor ; great hardship involved, 789-807. 818-823. 829-840. 849-852——Comment upon the action of the Bishop of Ripon, in recommending Mr. Edman not to litigate the matter with his predecessor, whilst he urged Mr. Edman's successor to persevere with his litigation for the recovery of the sum in question, 789, 790. 802. 840.

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Improvement if the surveyors under the Act were local men, selected by the clergy themselves, 809-812. 815-817. 824——Want of a reasonable appeal from the surveyor's report or bishop's order; the appeal might be to county court judge or bench of magistrates, 811. 813, 814. 825-828——Comment upon the liability of the incumbent of Hannah-cum-Hagnaby and Markby (Lincoln) in respect of an old and useless cottage, 841-846——Suggestion that under certain circumstances it may be compulsory upon Queen Anne's Bounty to advance the money required for repairs, 847, 848.

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*Hereford Diocese.* Paper showing the fees payable in this diocese to the surveyor, and to the bishop's secretary and registrar, under the Act of 1871; *App.* 187–189.

*Hills, Gordon Macdonald.* (Analysis of his Evidence.)—Is sole official surveyor for the diocese of London, and one of the two surveyors for the diocese of Rochester; extent of his district in the latter diocese, 2054–2059——Total of 802 benefices within the scope of witness' duties, about 260 being without residences, 2060——Appointment for the diocese of London held by him during good behaviour, whilst he is appointed for Rochester for limited periods, 2061–2066.

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Grounds for the conclusion that in the interests of the clergy it is very undesirable to largely increase the number of official surveyors for each diocese, and to allow incumbents to select their own surveyors from a list; advantage rather of the present system whereby one surveyor acts as umpire in the first instance, 2237–2266——Belief that the outgoing and incoming incumbents would not agree in the appointment of the same surveyor, and that partisan surveyors would be the result, 2249–2254. 2257, 2258—— Wise discretion exercised by the rural deans in limiting the number of diocesan surveyors; witness is not, however, opposed to some extension of the number in particular dioceses, 2253–2256. 2262–2266.

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*Hippisley, Edwin.* (Analysis of his Evidence.)—Extensive experience of witness as surveyor in dilapidation cases in the diocese of Bath and Wells, 1885, 1886——Appointment of three surveyors in the diocese under the Act of 1871, witness being one; arrangement as to each surveying in a defined district, 1887-1893——Practice as to calling in another surveyor in the event of the report of the surveyor for the district being objected to; numerous reports by witness, without another surveyor being called in, whilst there have been objections in only two cases, 1894-1906.

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*Hodges, Edward.* (Analysis of his Evidence.)—Considerable interest taken by witness (who is a solicitor at Newport, in Shropshire), in the working of the Dilapidations Act of 1871; local discussions on the subject, 910-913——Complaint made by the clergy as to the inflexible nature of the survey, whilst the bishop has no discretion to vary the surveyor's report, 914, 915. 923. 926. 971-973——Practice previously to 1871 for the outgoing and incoming incumbents to settle between them the amount for which the former was liable, the latter spending the money, 916-918.

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*Lay Rectors.* Belief that there is no remedy under the Act of 1871, as regards the repair of the chancel, in the case of lay rectors; amendments required on this point, *Elliot* 595-600. 631——Serious defect of the present Act, in not rendering lay impropriators responsible as regards the repair of chancels; amendment required, *Bishop of Peterborough* 1325-1327. 1370. 1421, 1422. 1440-1444; *Archbishop of York* 1777, 1778——Lay rectors should be compelled to insure chancels, but not be allowed to borrow from Queen Anne's Bounty, *Waller* 1541.

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*Lay Tenants.* Doubt as to the clergy being more strictly dealt with, as regards dilapidations, than tenants holding under lease; power, however, of the latter to appoint their own surveyors, and to appeal to the law courts, *Aston* 337-339. 354, 355——Explanation of the law and custom in regard to the liability of tenants of lay property; liability of yearly tenants only for tenantable repairs, whilst incumbents of livings are liable for substantial repairs, *Chancellor* 2712-2750. 2760-2775.

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*Lichfield Diocese.* Complaint that a per-centage is charged by the surveyors in the diocese, in addition to the fixed fees, *Mountfield* 464, 465. 500–502. 529–532——Undue delay as well as expense under the present system, *ib.* 468–470.

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*Lincoln Diocese.* Scale of fees payable in this diocese to the surveyor, and to the bishop's secretary and registrar, *App.* 190.

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*Llandaff Diocese.* Paper showing the fees payable in this diocese to the surveyor, and to the bishop's secretary and registrar, under the Act of 1871; *App.* 191. 192.

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*London Diocese.* Total of 127 orders received by witness in the diocese of London since the Act of 1871, of which fifteen were on application from the incumbent, *Hills* 2112. 2119, 2120——Absence of appeal in respect of his reports in London diocese, so that these have become absolute in law, *ib.* 2124-2128.

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*Ludlow Archdeaconry* (*Shropshire*). Very strong feeling in this archdeaconry against the Act of 1871; *Elliot* 563.

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*M'Lagan, Peter* (*Member of the House*). (Analysis of his Evidence.)—Explanation that by the law of Scotland the heritors are liable for the repairs of the manses, and that in well-managed parishes the work is seen to by a committee of their number, 2593–2603. 2612–2616——Power of the clergymen to appeal to the presbytery in the event of the heritors objecting to his demands, 2595——Obligation upon the heritors to abide by the decision of a committee of the presbytery, there being, however, a right of appeal from the latter; few disputes on the whole, 2595. 2597. 2604, 2605. 2617.

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*Manchester Diocese.* Paper showing the fees payable in this diocese to the surveyor, and to the bishop's secretary and registrar, under the Act of 1871; *App.* 192.

*Mells* (*Bath and Wells Diocese*). Maximum assessment for dilapidations in the case of the living of Mells, the amount being 1,651 *l.* 1 *s.*, *Aston* 2780.

*Mountfield, The Rev. David.* (Analysis of his Evidence.)—Is rector of Newport, Shropshire, 460——Desire of the clergy in Lichfield diocese to have a voice in the appointment of surveyors, and a power of appeal, 461–463. 466–468. 503–505. 508. 556–559——Complaint that a per-centage is charged by the surveyors in the diocese, in addition to the fixed fees, 464, 465. 500–502. 529–532——Undue delay as well as expense under the present system, 468–470.

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*Muker* (*York*). Particulars relative to the case of Mr. Edman who was instituted to the living of Muker, in the diocese of Ripon, in 1864, was unable, for certain reasons, to obtain anything from his predecessor for dilapidations, but was required, on preferment to another living, to pay a sum of 395 *l.* 2 *s.* 10 *d.* to his successor; great hardship involved, *Hebb* 789–807. 818–823. 829–840. 849–852——Comment upon the action of the Bishop of Ripon in recommending Mr. Edman not to litigate the matter with his predecessor, whilst he urged Mr. Edman's successor to persevere with his litigation for the recovery of the sum in question, *ib.* 789, 790. 802. 840.

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*New Buildings.* Equitable consideration desirable where an incumbent has provided new additional buildings, as in witness' case, *Phillips* 2570–2573.

*Newchurch in Rossendale* (*Lancashire*). Explanation of the circumstances under which witness, as incumbent of Newchurch in Rossendale, in the diocese of Manchester, spent about 4,000 *l.* upon the living chiefly upon a parsonage house; great grievance if his representatives were obliged to pay dilapidations upon this house, *Phillips* 2566–2568. 2570–2573. 2581–2584.

*Norwich Diocese.* Paper showing the fees payable in this diocese to the surveyor, and to the bishop's secretary and registrar, under the Act of 1871; *App.* 193, 194.

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*Orchards.* Grounds for the conclusion that the law of dilapidations includes the re-instatement of orchards, but not the renewal of fruit trees in gardens, *Hippisley* 1958–1962. 2030–2039.

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*Order to Survey.* Expediency of the bishop being empowered to withhold the order if he knows there is no parsonage &c. to survey, *Archbishop of York* 1718——Formal order received by witness from the bishop's secretary before each survey, *Hills* 2179, 2180.

*Outgoing Incumbents.* See *Clergy.*

*Oxford Diocese.* Scale of fees payable in this diocese to the surveyor and to the bishop's secretary and registrar, *App.* 194, 195.

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*Painting of Parsonages.* Statement as to interior painting not being included as a dilapidation, though outside painting is included; suggestion on the former point, *Aston* 180, 181.

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*Paulton (Somerset).* Information relative to the Paulton case; arbitrary course pursued in requiring the late vicar to erect a fence upon the glebe, though no fence had been there for very many years, if ever, *Simmons* 1146–1150. 1156. 1195–1197.

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*Queen Anne's Bounty:*

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2. *System of Repayment upon Surveyors' Certificates.*
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*Re-Surveys.* Power of the bishop to direct a second report by another surveyor, *Aston* 136, 137——Expediency of dispensing with fresh surveys under certain circumstances, *Archbishop of York* 1700——Power of the bishop, under the 29th section of the Act of 1871, to refrain from sending an order to survey in the event of vacancy, in case there has been a survey within five years previously, *ib.* 1715–1718.

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*Ruston, The Rev. James.* (Analysis of his Evidence.)—Resignation by witness in 1875 of the incumbency of Hordle (Hants), to which he was instituted in 1861; he is still chaplain to the garrison at Hurst, 1020–1025. 1031. 1061, 1062——Statement in detail of the circumstances which preceded witness' resignation; ground for complaint, more especially as to his being held liable for dilapidations to the amount of 171 *l.*, though the parsonage was not tenanted till 1864, and he spent a large sum upon repairs and outbuildings, whilst the net income of the living was only 120 *l.* a year, 1026 *et seq.*

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*Secretaries of Bishops.* Return showing the fees payable to the secretary of the archbishop or bishop in each diocese, in respect of the Act of 1871 ; *App.* 168 *et seq.*——*See* also *Fees, &c.*

*Sequestration.* Liability of the sequestrator for the whole of the repairs, previously to the Act of 1871 ; instance of this, *Archbishop of York* 1686, 1687——Exception taken to Section 20 of the Act of 1871 as regards the necessity of the sequestrator paying to Queen Anne's Bounty the money subsequently required to be withdrawn for repairs; enlarged powers desirable in the sequestrator, *ib.* 1689, 1690——Doubt as to an incumbent of a living under sequestration being required to find the money for dilapidations, or being unable to obtain any account of the expenditure, *ib.* 1706–1711 ——Functions of witness as to carrying out the repairs in sequestration cases, *Hills* 2129–2135——The sequestration cases under the present Act are about 80, *Aston* 2789.

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*Simmons, Charles John.* (Analysis of his Evidence.)—Experience of witness, as a solicitor, at Wrington, Somerset, in regard to the question of repairs of ecclesiastical property out on lease, 1110–1112——Details relative to some glebe land granted on lease for lives under the custom of Wrington Manor, in respect of which, though the lessees were bound to do all repairs, the rector has become liable for a further sum of 80 *l.*, besides nearly 30 *l.* for fees and other charges, 1113–1135. 1189–1191——Binding character of the Act of 1871 only as regards ecclesiastical persons, 1136–1143——Heavy liability in prospect for the vicar of Chew Magna, Somerset, in respect of some dilapidated cottages under copyhold tenure, 1136–1142.

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*Simons, The Rev. Charles Walker.* (Analysis of his Evidence.)—Experience of witness as to the working of the old Dilapidations Act and of the Act of 1871; he is now rector of Saintbury, in Gloucester diocese, 853, 854——Explanation as to there having been no charge for dilapidations in respect of witness' incumbency of Cradley (Worcester) under the old Act, 854–859——Strong complaint in regard to the surveyor's report in the case of Halford Bridge (Warwick), where the dilapidations were assessed at 86 *l.*, though witness was most careful to leave everything in good and tenantable repair, 862, 863. 867–870——Fear of litigation and expense which deterred witness from appealing in this case, 862–869.

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Instance of a small living in Essex where the incumbent, whose net income was only 100 *l.* a year, has been called upon to pay 400 *l.* in respect of some dilapidated cottages, *Tristram* 1603——Explanation that witness has had no case in Essex in which the dilapidations have been assessed at 400 *l.* in respect of some cottages, *Chancellor* 2703, 2704.

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*Somersetshire.* Exception taken to the statement that there has been a want of good feeling in Somersetshire with regard to the operation of the Act of 1871, *Hippisley* 2040, 2041.

*South Cave* (*York*). Great care taken by witness, as vicar of South Cave, to maintain the house, outbuildings, garden wall, &c., in a perfect state of repair; grievance in the surveyor having assessed the dilapidations, so called, at 65 *l.*, his requirements having been of a very minute and extreme character, *Wrangham* 676. 698–702——Appeal by witness in the South Cave case, but without effect; cost of about twelve guineas if another survey had been incurred, *ib.* 682, 683. 706–712. 747, 748.

*Specifications.* Practice of witness, and of other official surveyors, as to giving specifications, *Hills* 2151–2157. 2167–2170.

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*Surplus Assessments.* Payment by the new incumbent of any excess beyond the surveyor's estimate, whilst he is benefited by any saving upon the estimate, *Aston* 150 —— Instance of a surplus after completion of the required repairs, the balance having been expended in improvements, *Tristram* 1628, 1629——Grounds for the opinion that any surplus after execution of the required repairs should be returned to the incumbent from whom it was received, *Bayley* 1660.

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*Surveys and Surveyors:*

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3. *Number of Surveyors for the different Dioceses.*
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1. *Mode of Appointment of Diocesan Surveyors:*

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2. *Qualifications:*

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3. *Number of Surveyors for the different Dioceses:*

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4. *Question of Increasing the Number:*

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4. *Question of Increasing the Number*—continued.

for the convenience of the diocese, and that the number might be increased to four or six, or to a larger number, for each diocese, provided the cost be kept down, *Archbishop of York*, 1762–1772. 1782–1802——Moderate number of surveyors necessary in each diocese merely in order to guard against delay; objection to every qualified or respectable surveyor being placed on the list, *ib.* 1786–1802.

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5. *Question of Incumbents having a Voice in the Selection of Surveyors:*

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Advantage of a list of qualified surveyors, from which selections might be made; approval of land agents on the list, *Mountfield* 508. 516–521——Approval of one surveyor being placed on the selected list by the clergy in each rural deanery, though it should be optional to appoint a surveyor from one rural deanery to act in another, *ib.* 550–559——Witness objects, in fact, to the present monopoly, *ib.* 554.

Objection to the present system of statutable surveyors, *Elliot* 579. 639——Advantage of a list or register of competent surveyors for selection by the incumbents, *ib.* 588, 589. 639-642. 654-659——Explanation of the detailed arrangements proposed with a view to the outgoing and incoming incumbents appointing their own surveyors, *ib.* 654-659.

Improvement if incumbents were free to select their own surveyor, *Wrangham* 685. 692. 696. 735, 736. 758. 783——Advantage of approval by some local body upon the question of sufficiency of repairs, if the outgoing and incoming incumbents are allowed to appoint their own surveyors, *ib.* 758-761——Opinion that the old law worked better than the new, *ib.* 767.

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Numerous complaints by incumbents that they have no voice in the appointment of surveyors, *Bull* 904——Improvement if each ruridecanal chapter were to draw up a list of surveyors for approval by the bishop, whence incumbents might make their own selections, *Hodges* 945. 950, 951. 966——Expediency of incumbents having power to appoint their own surveyor; improvement if the churchwardens were to unite in naming the surveyor, *Ruston* 1074–1076. 1088.

Expediency of the clergy being at liberty to appoint any qualified surveyor in the diocese, *Astley* 1261–1264——Approval of the old plan of one surveyor on each side, unless the parties agreed to have the same surveyor *ib.* 1262——Suggested appointment of the referee by the rural dean, *ib.*

Exception taken to the complaint by incumbents that under the new law they have no voice in the choice of surveyors; security for good selection on the part of the archdeacons and rural deans, *Bishop of Peterborough* 1300——Grounds for the conclusion that efficiency or economy would not be secured if the incumbents might select their own surveyors out of a limited number, *ib.* 1369, 1370. 1382——Advantage rather of the surveyor being chosen by all the clergy in the diocese, and being liable to removal by the bishop for inefficiency or misconduct, *ib.* 1370–1385——Approval, however, of the incumbent being allowed to nominate his own surveyor in the event of his formally objecting to the official survey, *ib.* 1382, 1383.

Proposed election of the surveyors by the clergy in each deanery, *Waller* 1532. 1541——Approval of outgoing and incoming incumbents having the power of selecting their own surveyors; mutual concessions under the plan previously to the Act of 1871, *Tristram*

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5. *Question of Incumbents having a Voice in the Selection of Surveyors*—continued.

*Tristram* 1567–1569——Importance of a right of selection of surveyors if there be an appeal to a court of law and if costs be given, *ib.* 1584–1590.

Views adverse to the appointment of one surveyor on each side in the first instance, as under the old system, *Archbishop of York* 1740–1751———Conclusion as to the clergy generally not strongly desiring a departure from the system of diocesan surveyors, *ib.* 1751, 1752 ——Advantage of the appointment of official surveyor by the rural deans, rather than by the parochial clergy generally, *ib.* 1752.

Further approval of the system of diocesan surveyors, few in number, as tending to economy in the working of the Act of 1871; prejudice to the parochial clergy as a body if the outgoing and incoming incumbents might in each case select a surveyor, inasmuch as the charges would probably be increased, *Archbishop of York* 1786–1802. 1874–1884.

Examination to the effect that witness does not deny the right of the parochial clergy to have some voice in the selection of the surveyor, *Hippisley* 1934–1948——Doubt, however, as to any advantage arising from a large increase in the number of official surveyors, though it is doubtless desirable to make provision against undue delay, *ib.* 1976–1984.

Appointment generally of a surveyor on each side under the former law, so that a compromise resulted which was usually very unjust, whilst legal proceedings sometimes ensued, *Hills* 2069–2084——Grounds for the conclusion that in the interests of the clergy it is very undesirable to largely increase the number of official surveyors for each diocese, and to allow incumbents to select their own surveyors from a list; advantage rather of the present system whereby one surveyor acts as umpire in the first instance, *ib.* 2237–2266——Belief that the outgoing and incoming incumbents would not agree in the appointment of the same surveyor, and that partisan surveyors would be the result, *ib.* 2249–2254. 2257, 2258.

Objection by the Bishop of Exeter to the appointment of several surveyors in each archdeaconry, with an option in the incumbent to nominate his own, *App.* 206.

Views of the Lower House of Convocation of Canterbury in favour of allowing the late and present incumbents to jointly nominate any of the diocesan surveyors to make the inspection and report, *App.* 212. 219.

Conclusion of the Committee that, if the principle of the Act be maintained, an increased number of approved surveyors should be appointed, from whom the clergy may select, *Rep.* vi.

6. *Extensive Powers of the Diocesan Surveyor under the Act of* 1871:

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Very general complaint among the clergy as to the arbitrary power of the surveyor, whilst they have no satisfactory appeal, *Williams* 400. 429. 450——Comment upon the arbitrary conduct of a surveyor in trying to compel the widow of an incumbent to provide two cottages on some glebe; charges incurred in this matter, though the liability in question did not exist, *ib.* 416–419——Instance of a surveyor having ordered a stone wall to be built, though it was found on inquiry that the wall never belonged to the incumbent, *ib.* 420–425.

Different principles by which different surveyors are guided in estimating for dilapidation, *Wrangham* 676. 681——Complaints made by incumbents as to the arbitrary exercise of power by surveyors, *Bull* 904——Complaint made by the clergy as to the inflexible nature of the survey, whilst the bishop has no discretion to vary the surveyor's report, *Hodges* 914, 915. 924. 926. 971–973——Different views of different surveyors as to their duties, whilst the incumbents have no voice in the matter, *Simmons* 1192–1194.

Enlarged jurisdiction of the official surveyor under the present Act, his report moreover becoming final if not objected to within a month, *Tristram* 1551–1558.

Absence of complaint on the score of a surveyor being obliged to adopt the acts and reports of his predecessor without modification; witness, however, has not considered this point, *Archbishop of York* 1822–1827.

Obligation upon the incumbent to carry out the works as specified in witness' report, unless alteration has been sanctioned by the bishop; practice as to reference to witness, and as to his certifying for payment without any extra fee, *Hills* 2158–2166. 2171–2173 ——Further explanation upon the question of the surveyor's report being absolute under certain circumstances, *ib.* 2278–2287——Alteration probably required as regards a surveyor being bound by the acts of his predecessor, *Barker* 2529–2533.

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7. *Practice as to Inspection without communicating, necessarily, with the Incumbent:*

Desire of some of the clergy to have a right of being present when the surveyor makes his inspection, *Mountfield* 506, 507——Power of the surveyor to refuse to hear the old or new incumbent, though in witness' diocese, directions are given to the surveyor in an opposite sense, *Bishop of Peterborough* 1308–1313.

Practice of witness to make his inspection and report without calling for any communication from the outgoing or incoming incumbent, *Hippisley* 1949–1953——Communication of witness, as a rule, with the old incumbent or his representatives in reference to the survey of the premises, *Hills* 2174–2178—— Practice of other diocesan surveyors as well as witness to see the outgoing and incoming incumbents, if feasible, *ib.* 2298.

8. *Question as to Surveyors acting Partially:*

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Explanation that witness, as diocesan surveyor, acts neither for the new incumbent nor the old, but represents the church as arbitrator between the two, *Barker* 2487–2493. 2549–2557.

9. *Expediency of Providing for prompt Inspection on Vacancy:*

Grounds for the suggestion that the surveyor should be required to assess the dilapidations within three months of the vacancy by resignation or otherwise; instance of grievance through the survey having been delayed, *Tristram* 1625, 1626——Want of power in the bishop to direct the time within which the survey should take place, *Archbishop of York* 1719.

10. *System of Inspection on Vacancy, as well as on Request:*

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Dissatisfaction of the clergy with the facilities of inspection under the Act of 1871, so that further facilities in this direction are not desirable, *Hodges* 1018, 1019.

11. *Suggestions for a Periodical Survey:*

Advantage of periodical survey as leading to timely and cheaper repairs; suggestions hereon, *Bishop of Peterborough* 1360——The survey should be septennial and not dependent on the life or death of the incumbent, *Waller* 1530. 1532. 1541——Improvement by a periodical survey of benefices; that is, when there is an avoidance, *Archbishop of York* 1779–1781.

Views of the Bishop of Exeter in favour of compulsory and regular surveys, and of payment by salary instead of by fees, *App.* 206.

System of periodical survey contemplated by the Committee in the event of there being an annual payment or insurance for dilapidations, as recommended by the Committee, *Rep.* vi.

12. *Constitution and Objects of the Ecclesiastical Surveyors' Association:*

Explanation in regard to the formation of the Ecclesiastical Surveyors' Association, and its failure to secure uniformity of practice in carrying out the Act, *Aston* 249–260.

Formation of the Surveyors' Association in June 1872, *Hills* 2324–2326——Rules laid down by the society for the guidance of the diocesan surveyors in working the Act, the society being also open to receive complaints from aggrieved incumbents and others, but not acting as a court of inquiry in any way, *ib.* 2327–2345——Doubt as to the working of the Act being facilitated by the diocesan surveyors or their society being made more important, *ib.* 2346——Entire publicity of the proceedings of the association, *ib.* 2454.

General objects of the Surveyors' Association to promote uniformity of practice in carrying out the Act, *App.* 166.

*See* also *Annual Charge. Appeal. Certificates by Surveyors. Classification of Dilapidations. Definition of Dilapidations. Entry to Premises. Estimates. Fees, &c. Litigation. Order to Survey. Plans. Queen Anne's Bounty. Removal of Buildings. Repairs and Renewals. Re-Surveys. Superintendence of Works.*

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*Terriers* (*Boundaries of Glebe, &c.*) Proposal that a terrier be provided in all cases, *Waller* 1541——Grounds for the suggestion that a terrier should be made in every parish, *Phillips* 2575, 2576.

Conclusions of a committee of the Lower House of Convocation of Canterbury as to the want of new or amended terriers in numerous instances, *App.* 214——Resolution of the Lower House on this subject, *ib.* 219.

*Thornes* (*York*). Instance at Thornes, near Wakefield, of a large charge for dilapidations, though the out-going incumbent had taken steps to put everything in perfect order, *Webb* 808.

*Timber.* Occurrence of a few cases under the Act of 1871 in which the timber on the glebe has been claimed as a set-off against the dilapidations, *Aston* 361, 362.

*Travelling Expenses* (*Surveyors*). Increased expense to the incumbent in respect of travelling expenses of the surveyor, when there is only one surveyor for the whole diocese, as for Winchester, *Aston* 229–231——Particulars as to the amount and regulation of witness's charges for travelling expenses, as official surveyor for the diocese of Winchester, *Barker* 2500–2515.

Abstract showing whether the surveyors' charges for travelling expenses are inclusive or additional in the different dioceses, *App.* 164, 165.

*See* also *Bath and Wells Diocese.*

*Tristram, The Worshipful Thomas Hutchinson,* D.C.L. (Analysis of his Evidence.)—Is Judge of the Consistory Court of London, and Chancellor of the dioceses of London, Canterbury, and Hereford: has had considerable experience of the working of the law of dilapidations before and since 1871; 1542–1545——Has attended several meetings of archdeacons and rural deans, who have expressed themselves as satisfied generally with the working of the Act of 1871, though cases of hardship have been adduced, 1544.

Very few cases of dilapidation litigated between 1840 and 1860 in which questions of law were raised: satisfactory decisions in these cases, there having been no appeal, 1546–1550——Enlarged jurisdiction of the official surveyor under the present Act; his report, moreover, becoming final if not objected to within a month, 1551–1558——Opinion that the Act works great injustice in many cases, many of the clergy being greatly dissatisfied with it, 1559–1563.

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Liability of the incumbents to much hardship when ordered to restore old buildings which are useless or to re-build them if pulled down, 1572–1576——Expediency of a much longer time than one month being allowed for objection to the surveyor's report, 1577–1582——Importance of a right of selection of surveyors if there be an appeal to a court of law, and if costs be given, 1584–1590——Difficulty as to costs in the event of the report of the diocesan surveyor being upset on appeal, 1587–1593.

Suggestions as to the course open to an incumbent in the event of the diocesan surveyor reporting that the buildings are in a dilapidated condition, 1591–1593——Advantage if on matters of fact there were an appeal to a local and inexpensive tribunal, whilst questions of law should go before a court of law, 1594–1602——Argument that in assessing dilapidations the income of the living should be taken into consideration, and that the charge should fall upon the benefice over an extended period instead of falling entirely on the old incumbent; due recognition of this principle under the old law, 1603–1610.

Instance of a small living in Essex, where the incumbent, whose net income was only 100*l.* a year, has been called upon to pay 400*l.* in respect of some dilapidated cottages, 1603——Concurrence in the view that there should be a definition of dilapidations, instead of surveyors following different principles in different dioceses, 1611–1616——Approval of an enlarged power in the bishop to order the pulling down of old and useless buildings; hardship at present through the liability of incumbents in respect of useless buildings allowed to tumble down, 1617–1619. 1622–1624——Opinion favourable to a uniform scale of fees, 1620, 1621.

Grounds for the suggestion that the surveyor should be required to assess the dilapidations within three months of the vacancy, by resignation or otherwise; instance of

*Tristram, The Worshipful Thomas Hutchinson,* D.C.L. (Analysis of his Evidence)—*contd.*
grievance through the survey having been delayed, 1625, 1626——Illustration in the case of Jones *v.* Dangerfield of the unsatisfactory state of the law in the event of an incumbent dying insolvent, the living being under sequestration, but no order having been made during his lifetime, 1626, 1627——Instance of a surplus after completion of the required repairs, the balance having been expended in improvements, 1628, 1629.

U.

*Unexhausted Improvements.* Circumstance of no allowance being made for unexhausted improvements, *Simons* 863——Complaints made by incumbents as to their having no compensation for unexhausted improvements, *Bull* 904——Dissent from the view that the existing incumbents should have a claim for unexhausted improvements, *Hodges* 993–995——Expediency of some allowance being made for unexhausted improvements, *Bayley* 1659, 1660.

V.

*Voluntary Surveys.* See *Five Years' Certificates.*

W.

*Waller, The Rev. Adolphus.* (Analysis of his Evidence.)—Is Vicar of Hunstanton, Norfolk; has studied the law of dilapidations, and has published a pamphlet on the subject, 1513–1516——Proposal that the benefice, and not the incumbent, should be liable for repairs, there being first a survey of all benefices, in order to fix the annual charge in each case, 1517–1532——Shorter or longer period to be fixed for the repayment of loans to Queen Anne's Bounty accordingly as there has been more or less neglect on the part of the incumbent, 1519–1521. 1532——Appeal proposed from the surveyors' reports assessing the dilapidations, 1522–1526.

Contemplated insurance of all livings by the Bounty Board, witness' views being very similar to those of the Bishop of Peterborough on this point, 1528–1532——Preparation by witness of a Bill embodying all his suggestions; enumeration of these, 1529–1532. 1541——Proposed election of the surveyors by the clergy in each deanery, 1532. 1541——Special arrangement proposed as regards fixtures, which should be credited as against dilapidations, 1532–1541.

*White Roding (Essex).* Correction of certain statements by the Incumbent of White Roding as to the action of witness in respect of this living in 1872, when it was under sequestration, *Chancellor* 2652 *et seq.*——Payment of the amount for dilapidations (396 *l.* 5 *s.*) into Queen Anne's Bounty, it falling upon witness to carry out the repairs; completion of these under contract for 366 *l.*, the balance sufficing to pay his fees and commission, *ib.* 2655–2657. 2661–2703——Explanation as to witness not having yet certified to the Bounty Board for the withdrawal of the money, *ib.* 2660. 2679–2691——Application by witness to the sequestrator in the event of there not being enough to pay the fees, &c., after execution of the works, *ib.* 2693–2703.

*Williams, The Rev. Canon David.* (Analysis of his Evidence.)—Is Incumbent of Castle Rectory, near Welshpool, having formerly been Rector of Nannerch, near Flintshire; has taken much interest in the question of dilapidations and in the working of the Act of 1871; 368–375——Submits that grievance arises in there being no appeal from the bishop, and that the parochial clergy generally are greatly dissatisfied through the want of an inexpensive appeal to some tribunal other than the bishop, 375, 376. 400. 412–415. 429–435. 449, 450. 452–458.

Illustration in witness' case of the very unsatisfactory and costly operation of the Act of 1871; necessity of his paying for counsel's opinion and other charges, in order to prove that he was not liable for a certain item included in the surveyor's report, 376–379. 388. 391–394. 436–448——Comment upon the action of the bishop in the foregoing matter, 378——Circumstance of witness having spent 1,000 *l.* upon the premises in respect of which he had subsequently to pay 120 *l.* for dilapidations, 380.

Entire absence of litigation in St. Asaph Diocese under the former system, whereby the question of dilapidation was settled between the outgoing and incoming incumbents, without the necessary intervention of an official surveyor, 381–383. 396. 413——Approval of the plan of lodging the money with Queen Anne's Bounty till the work is done, 384——Comparatively small number of voluntary surveys in the province of Canterbury under the Act of 1871; 386, 387. 401.

Report, 1876—*continued.*

*Williams, The Rev. Canon David.* (Analysis of his Evidence)—*continued.*

Instance, in Montgomeryshire, of the widow of an incumbent having been required to pay certain charges open to objection, as well as a fee to the bishop's secretary, 389, 390 ——Grievance in the refusal of the surveyor's certificate in respect of work done by the new incumbent of a certain living in Shropshire; large expenditure over and above the amount of the dilapidations, some items under the latter head having been justly objected to, 397–399.

Very general complaint among the clergy as to the arbitrary power of the surveyor, whilst they have no satisfactory appeal, 400. 429. 450——Importance of the clergy having a voice in the appointment of the surveyor from a list selected by the archdeacons and rural deans, 402–406. 412. 430–435. 457, 458——If necessary, one surveyor on each side might be appointed, with a referee named by Queen Anne's Bounty Board, 404–408. 433–435. 453.

Expediency of dilapidations being divided into two classes, and of wear and tear by time being charged upon the living, 409–411——Exception taken to the course pursued in altering the draft of the Bill of 1871 by substituting the archbishops and bishops for the archdeacons and rural deans as referees from the surveyor, 414–416 454–456.

Comment upon the arbitrary conduct of a surveyor in trying to compel the widow of an incumbent to provide two cottages on some glebe; charges incurred in this matter, though the liability in question did not exist, 416–419——Instance of a surveyor having ordered a stone wall to be built, though it was found on inquiry that the wall never belonged to the incumbent, 420–425.

Absolute effect of the surveyor's report if not objected to within a month, 426–428—— Dissatisfaction with the Act on the part alike of incoming and outgoing incumbents, 450 ——Appointment of only one diocesan surveyor in St. Asaph Diocese, 459.

*Winchester Diocese.* Defect in the appointment of only one diocesan surveyor, *Bishop of Peterborough* 1388——Witness has never heard any complaint through there being only one surveyor for the diocese, *Hills* 2265.

Total of about 200 surveys made by witness as official surveyor for the diocese of Winchester since the Act of 1871; forty-five of these have been voluntary surveys, *Barker* 2458–2465——Satisfaction apparently of the majority of the clergy in the diocese with the operation of the Act, *ib.* 2534. 2565.

Paper showing the fees payable in the diocese to the surveyor, and to the bishop's secretary and registrar, *App.* 173, 174.

*Wise* v. *Metcalfe.* Reference to this case as guiding the bishop in the event of appeal against the surveyor's report, *Aston* 18–20——Reference also to the case of Wise *v.* Metcalfe as containing an exposition of the law with respect to the obligations upon the incumbent in regard to repairs, *ib.* 179——Approval of the definition of dilapidations in the case of Wise *v.* Metcalfe, *Bishop of Peterborough* 1445, 1446——Guidance of surveyors before the Act of 1871 chiefly by the decision in the case of Wise *v.* Metcalfe, *Hills,* 2094–2111——Recognition by witness of the principles laid down in the case of Wise *v.* Metcalfe, as guiding him in his reports, *Barker* 2516–2518. 2522–2524.

*Worcester Diocese.* Papers showing the fees payable in this diocese to the surveyor, and to the bishop's secretary and registrar under the Act of 1871; *App.* 201, 202.

*Wrangham, The Rev. Digby Strangways.* (Analysis of his Evidence.)—Is Vicar of Darrington, having formerly been Vicar of South Cave; has for some years taken much interest in the law of dilapidations, 672–675—— Great care taken by witness as Vicar of South Cave to maintain the house, outbuildings, garden wall, &c., in a perfect state of repair; grievance in the surveyor having assessed the dilapidations, so called, at 65 *l.*, his requirements having been of a very minute and extreme character, 676. 698–702 ——Allowance of only 18 *l.* for dilapidations at Darrington, on witness' appointment, 676, 677.

Different principles by which different surveyors are guided in estimating for dilapidations, 676. 681——Insufficient time allowed for appeal after the receipt of the surveyor's report; instance in the case of Darrington, 677–680. 709, 710——Complaint by the clergy that their responsibility under the Act of 1871 is altogether undefined, 681 ——Absence of any effective appeal from the surveyor's report, 681–684. 770, 771—— Appeal by witness in the South Cave case but without effect; cost of about twelve guineas if another survey had been incurred, 682, 683. 706–712. 747, 748.

Insufficient time of the bishops for investigating the questions at issue, so that the matter is settled very much by their secretaries, 683, 684——Improvement if incumbents were free to select their own surveyor, 685. 692. 696. 735, 736. 758. 783——Complaint as to the undue restrictions upon the clergy in dealing with ecclesiastical property, whilst their responsibilities are very heavy; different principles in regard to lay property,

Report, 1876—*continued.*

*Wrangham, The Rev. Digby Strangways.* (Analysis of his Evidence)—*continued.*

under lease, 685–689. 692–696. 716–727. 739–742. 749–755——Undue restriction in its being necessary to insure parsonage houses in the name of Queen Anne's Bounty, 685. 722–727. 739–742. 749–755——Great discouragement to expenditure upon glebe houses under the liabilities imposed by the Act of 1871; 688. 692.

Failure of the provision as to five years' certificates, no real advantage being conferred thereby, 689–691——Comment upon the agreement among surveyors that houses, &c., are to be put into a state of complete repair, 693, 694. 696. 702——Suggestion that structural repairs might be fairly charged upon the living, 695. 757——Decided improvement in many cases if land agents instead of architects were the surveyors, 702, 703——Amendment suggested in the Act upon the question of the liability of the outgoing incumbent extending over three months, 708. 785, 786——Heavy incidence of the surveyor's charges, 711–714. 737, 738.

Exceptional instances of grievance by reason of incumbents succeeding to parsonages much too large for their requirements; remedy in such case, 728–732——Want of more than three statutable surveyors for the diocese of York, 743–746——Concurrence of the Archbishop of York in the view that dilapidations should be defined by statute, 756——Advantage of approval by some local body upon the question of sufficiency of repairs, if the outgoing and incoming incumbents are allowed to appoint their own surveyors, 758–761.

Approval of a system of insurance in advance, in order to provide a dilapidations fund; suggestion hereon that the insurance money for repairs as well as for fire be paid to Queen Anne's Bounty, 762–766. 779–782——Opinion that the old law worked better than the new, 767——Want of more definite instructions for the surveyor, 768——Advantage if there were an appeal to some lay court, 769–771. 784.

Approval of a uniform scale of fees, 772, 773——Improvement if the cost of survey were divided between the outgoing and incoming incumbents, 774, 775——Objection to the condition of the glebe land being dealt with by the surveyor, 776–778——Disapproval of the archdeacon being re-substituted for the bishop in the working of the Act, 784.

*Wrington (Somerset).* See *Leases.*

## Y

*York, The Most Rev. The Lord Archbishop of.* (Analysis of his Evidence.)—Explanation as to the system of appointment and tenure of office of surveyors, under Section 8 of the Act of 1871; power of removal in the bishop on complaint of unfitness, 1661–1667——Reason for the provision, in Section 10 of the Act, that the surveyor should be paid by fees and not by salary; opinion that payment by fees does not involve any grievance to the clergy, 1668–1674.

Conclusion as to the bishop having a general power to extend the time named in the surveyor's report for the execution of the required repairs, although the report may have become absolute through the incumbent not having objected, 1675–1680——Power of the bishop to object to the report on the ground only that the survey had been imperfectly or improperly made, 1680, 1681——Difficulty in certain cases in carrying out the required repairs in the event of the bishop giving a decision which would reduce too much the amount calculated as necessary by the surveyor, 1681–1684.

Liability of the sequestrator for the whole of the repairs, previously to the Act of 1871; instance of this, 1686, 1687——Priority of the claim for expenditure on dilapidations over the claims of other creditors, 1688, 1689——Exception taken to Section 20 of the Act of 1871 as regards the necessity of the sequestrator paying to Queen Anne's Bounty the money subsequently required to be withdrawn for repairs; enlarged powers desirable in the sequestrator, 1689–1700——Expediency of dispensing with fresh surveys under certain circumstances, 1700.

Obligation upon the bishop in respect of repairs in the event of neglect on the part of the incumbent, 1701–1705——Doubt as to an incumbent of a living under sequestration being required to find the money for dilapidations, or being unable to obtain any account of the expenditure, 1706–1711——Suggestion that the incumbent might have an appeal from the surveyor's decision to a lay body in the diocese; objection to an appeal to the courts of law, on the score of the expense, 1712–1714.

Power of the bishop under the 29th section of the Act of 1871, to refrain from sending an order to survey in the event of vacancy, in case there had been a survey within five years previously, 1715–1718——Expediency of the bishop being empowered to withhold the order if he knows there is no parsonage, &c., to survey, 1718——Want of power in the bishop to direct the time within which the survey should take place, 1719——Advantage of the surveyor determining the time for executing the repairs, 1720, 1721.

Discretion

*York, The Most Rev. The Lord Archbishop of.* (Analysis of his Evidence)—*continued.*

Discretion desirable in the bishop in respect of the new incumbent having a longer time than six months in which to pay the money, 1722–1724——Advantage of the bishop being able to send all contentious cases to another tribunal, 1724—— Approval of the course pursued by the Bounty Board in limiting the time for repayment of loans in the case of aged incumbents; case in point, 1725.

Opinion that a general scheme of insurance against fire and of repairs might be beneficially worked by the Bounty Board, if the Act of 1871, in an amended form, were first in operation for some time longer, so that the parsonages generally might be put into a proper state, 1726. 1755, 1756. 1808–1811. 1841, 1842——Boon to the incumbents of small livings if relieved in respect of dilapidations through Queen Anne's Bounty 1727, 1728.

Objection to the patron having an absolute veto upon loans from the Bounty Board in certain cases, 1729–1731——Approval of an appeal from the patron in case of objection to the removal of unnecessary buildings, 1732——Liability desirable in the event of buildings tumbling down for want of repairs, 1733.

Suggestion that in any new Act there be a definition of dilapidations in a schedule; reasons for concluding that such definition is now feasible, 1734——Explanation on the question of costs in cases of appeal from the surveyor to a lay tribunal, 1734–1740——Conclusions adverse to the appointment of one surveyor on each side in the first instance, as under the old system, 1740–1751.

Particulars in connection with a meeting convened by witness in January 1875, at which a clergyman attended from each diocese in the province, and at which sundry amendments were suggested in the Act of 1871; no suggestions were made for a departure from the system of diocesan surveyors, 1751, 1752——Advantage of the appointment of the official surveyor by the rural deans rather than by the parochial clergy generally, 1752——Concurrence in the view that the diocesan surveyor's report should be in accordance with the covenants in the case of property on lease, 1753, 1754.

Further approval of a schedule of dilapidations, as a means of facilitating remedy in the event of the surveyor's report being unduly strict or fastidious, 1757–1761. 1773–1776——Evidence to the effect that the surveyors should be localised for the convenience of the diocese, and that the number might be increased to four or six, or to a larger number, for each diocese, provided the cost be kept down, 1762–1772. 1782–1802——Approval of impropriators being brought under the Act with regard to the repairs of chancels, 1777, 1778.

Improvement by a periodical survey of benefices; that is, when there is an avoidance, 1779–1781——Moderate number of surveyors necessary in each diocese merely in order to guard against delay; objection to every qualified or respectable surveyor being placed on the list, 1786–1802——Concurrence in the opinion that there should be more than one official surveyor for the diocese of Durham, 1794–1798.

Opinion that the proposed definition or directory schedule of dilapidations may be effectually settled by Parliament, 1803–1807——Low scale of surveyor's fees under the present Act, the distinction of being diocesan surveyor inducing men to undertake the work at less than its market value, 1813–1816——Approval of dilapidations being divided into two classes, for one only of which the incumbent or his representatives should be liable, 1817, 1818.

Explanations as to the archbishops and Lord Chancellor not having fixed a uniform table of fees for all the dioceses; objection to a uniform system being now laid down, 1819–1821——Absence of complaint on the score of a surveyor being obliged to adopt the acts and reports of his predecessor without modification; witness has not considered this point, 1822–1827——Expediency of the surveyor being empowered to enter the premises in spite of the incumbent, 1828, 1829.

Explanation that witness is not responsible for the provisions of the Act of 1871 though he brought in the Bill in the House of Lords, 1830——Main object of the Act to secure a complete valuation of dilapidations, and a proper application of the money, 1831——Belief that the great majority of the clergy do not wish for a repeal of the Act, and that up to a certain point, the measure has been effectual, 1832. 1881. 1884——Conclusion that the surveyor's valuation should proceed on the principle of the house being put in a fair condition as a place of residence by the outgoing incumbent, and that all repairs essential to prevent ruin should be imperative, 1833–1840.

Much consideration necessary before the adoption of a scheme whereby Queen Anne's Bounty Board should undertake repairs generally out of their own funds, recouping themselves by an annual payment levied on the incumbents; objections which might be urged against this proposal, though the object is good, 1840–1850.

Evidence to the effect that witness strongly disapproves of sales of glebe lands, as a rule, but that in certain cases outlying pieces of glebe might be sold for the augmentation of the livings, and as a means of relief in respect of dilapidations, 1851–1855. 1859–1868

 ——Doubt

Report, 1876—*continued.*

*York, The Most Rev. The Lord Archbishop of.* (Analysis of his Evidence)—*continued.*

——Doubt as to the expediency of applying the law of dilapidations to the management of land as well as to buildings and fences, 1856, 1857——Approval of the surveyor being paid for the work done, instead of by salary, 1858.

Difficulty apprehended as regards the transfer or sale of outlying glebe lands to the Ecclesiastical Commissioners, 1859–1865. 1868——Frequent sales of small outlying glebes, where so much as forty or forty-two years' purchase can be obtained, 1865–1867 ——Absence of complaint in respect of the surveyor's charge of 5 per cent. upon the valuations when the work is executed by himself, 1869.

Statement in explanation of the bishop's houses and those of minor canons being dealt with exceptionally as regards the question of liability for dilapidations, 1870–1873 ——Further approval of the system of diocesan surveyors, few in number, as tending to economy in the working of the Act of 1871; prejudice to the parochial clergy, as a body, if the outgoing and incoming incumbents might in each case select a surveyor, inasmuch as the charges would probably be increased, 1874–1884.

*York Diocese.* Want of more than three official surveyors for the diocese, *Wrangham* 743–746.

Tables of fees payable to surveyors in the diocese, *App.* 169——List of fees payable to the secretary and registrar, *ib.* 170.

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*Brought from the Lords,* 1 *June* 1876.

# REPORT

FROM THE

SELECT COMMITTEE OF THE HOUSE OF LORDS

ON THE

# ECCLESIASTICAL OFFICES AND FEES BILL [H.L.];

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

AND APPENDIX.

*Ordered, by* The House of Commons, *to be Printed,*
9 *June* 1876.

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PROCEEDINGS OF THE COMMITTEE - - - - p. v
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# REPORT.

BY THE SELECT COMMITTEE appointed to consider the "ECCLESIASTICAL OFFICES AND FEES BILL [H.L.]," and to Report to The House; and to whom was referred the Petition of Archdeacon G. A. Denison.

ORDERED TO REPORT,

THAT the Committee have met, and considered the said Bill, and have directed the same to be reported to your Lordships, with some Amendments.

26th May 1876.

## ORDER OF REFERENCE.

### *Die Jovis*, 2° *Martii* 1876.

ECCLESIASTICAL OFFICES AND FEES BILL [H.L.]

Order of the day for the Second Reading, read: *Moved*, That the Bill be now read 2ª; after debate, *agreed to*; Bill read 2ª accordingly, and referred to a Select Committee.

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### *Die Lunæ*, 6° *Martii* 1876.

Select Committee to be named To-morrow.

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### *Die Martis*, 7° *Martii* 1876.

Select Committee on: The Lords following were named of the Committee:

Lord Archbishop of Canterbury.
Lord Chancellor.
Marquess of Salisbury.
Lord Steward.
Earl of Shaftesbury.
Earl Stanhope.
Earl of Powis.
Earl Nelson.
Viscount Halifax.
Viscount Cardwell.
Lord Bishop of Gloucester and Bristol.
Lord Bishop of Ely.
Lord Strafford.
Lord Hatherley.
Lord Winmarleigh.

The Committee to meet on Wednesday the 15th instant, at Twelve o'clock, and to appoint their own Chairman.

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## LORDS PRESENT, AND MINUTES OF PROCEEDINGS AT EACH SITTING OF THE COMMITTEE.

### *Die Mercurii*, 15° *Martii* 1876.

LORDS PRESENT:

| | |
|---|---|
| Lord Archbishop of Canterbury. | Lord Bishop of Gloucester and Bristol. |
| Lord Steward (Earl Beauchamp). | Lord Bishop of Ely. |
| Earl Stanhope. | Lord Strafford. |
| Earl of Powis. | Lord Hatherley. |
| Earl Nelson. | Lord Winmarleigh. |
| Viscount Halifax. | |

Order of Reference read.

Order of the House of Tuesday the 7th of March last, empowering the Committee to appoint their own Chairman, read.

It is proposed, That the Lord Archbishop of Canterbury do take the Chair.

The same is agreed to, and the Lord Archbishop of Canterbury takes the Chair accordingly.

The course of proceeding is considered.

*Ordered*, That the Committee be adjourned till Monday next, at Twelve o'clock.

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### *Die Lunæ*, 20° *Martii* 1876.

LORDS PRESENT:

| | |
|---|---|
| Lord Archbishop of Canterbury. | Viscount Cardwell. |
| Lord Steward. | Lord Bishop of Ely. |
| Earl Stanhope. | Lord Strafford. |
| Earl Nelson. | Lord Hatherley. |
| Viscount Halifax. | Lord Winmarleigh. |

The Lord ARCHBISHOP OF CANTERBURY in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Wednesday last are read.

Mr. *Charles J. Monk*, M.P., attending, is examined.

The following Witnesses are called in, and examined (*vide* the Evidence), viz.: Mr. *Francis Hart Dyke*, the Venerable Archdeacon *Pott*, Mr. *John B. Lee*, Mr. *Simon Dunning*, and Mr. *Arthur J. Day*.

*Ordered*, That the Committee be adjourned till Wednesday next, at Twelve o'clock.

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## *Die Mercurii*, 22° *Martii* 1876.

LORDS PRESENT:

Lord Archbishop of Canterbury.
Lord Steward.
Earl of Shaftesbury.
Earl Stanhope.
Earl of Powis.
Earl Nelson.
Viscount Halifax.
Lord Bishop of Gloucester and Bristol.
Lord Bishop of Ely.
Lord Strafford.
Lord Hatherley.
Lord Winmarleigh.

The Lord ARCHBISHOP OF CANTERBURY in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Monday last are read.

The following Witnesses are called in, and examined (*vide* the Evidence), viz.: Mr. *James Parker Deane*, D.C.L., Mr. *John Marriott Davenport*, the Venerable Archdeacon *Prest*, the Rev. *William Boyd*, and the Venerable Archdeacon *Kaye*.

*Ordered*, That the Committee be adjourned till Monday next, at Twelve o'clock.

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## *Die Lunæ*, 27° *Martii* 1876.

LORDS PRESENT:

Lord Archbishop of Canterbury.
Lord Steward.
Earl of Shaftesbury.
Earl Stanhope.
Earl Nelson.
Viscount Halifax.
Viscount Cardwell.
Lord Bishop of Ely.
Lord Strafford.
Lord Hatherley.
Lord Winmarleigh.

The Lord ARCHBISHOP OF CANTERBURY in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Wednesday last are read.

The following Witnesses are called in, and Examined (*vide* the Evidence), viz.: The Dean of *Lichfield*, the Venerable Archdeacon Lord *Alwyne Compton*, the Rev. *Henry A. Jeffreys*, the Venerable Archdeacon *Johnson*, and Mr. *Robert George Raper*.

*Ordered*, That the Committee be adjourned till Wednesday next, at Twelve o'clock.

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## *Die Mercurii*, 29° *Martii* 1876.

LORDS PRESENT:

Lord Archbishop of Canterbury.
Lord Steward.
Earl Stanhope.
Earl Nelson.
Viscount Halifax.
Lord Bishop of Ely.
Lord Hatherley.
Lord Winmarleigh.

The Lord ARCHBISHOP OF CANTERBURY in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Monday last are read.

The following Witnesses are called in, and examined (*vide* the Evidence), viz.: The Rev. *Thomas E. Espin*, the Rev. *James H. Nowers*, the Venerable Archdeacon *George Hans Hamilton*, and the Rev. *Charles A. Stevens*.

*Ordered*, That the Committee be adjourned till Friday next, at Twelve o'clock.

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## *Die Veneris*, 31° *Martii* 1876.

LORDS PRESENT:

| | |
|---|---|
| Lord Archbishop of Canterbury. | Viscount Halifax. |
| Lord Steward. | Lord Bishop of Ely. |
| Earl Stanhope. | Lord Winmarleigh. |

The Lord ARCHBISHOP OF CANTERBURY in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Wednesday last are read.

The following Witnesses are called in, and examined (*vide* the Evidence), viz.: Mr. *George Pringle*, Mr. *Henry Pearson Gates*, and the Rev. *Michael Gibbs*.

*Ordered*, That the Committee be adjourned till Monday next, at Twelve o'clock.

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## *Die Lunæ*, 3° *Aprilis* 1876.

LORDS PRESENT:

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|---|---|
| Lord Archbishop of Canterbury. | Viscount Halifax. |
| Lord Steward. | Lord Bishop of Ely. |
| Earl Stanhope. | Lord Hatherley. |
| Earl Nelson. | Lord Winmarleigh. |

The Lord ARCHBISHOP OF CANTERBURY in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Friday last are read.

The following Witnesses are called in, and examined (*vide* the Evidence), viz.: Mr. *Edmund C. Currey*, Mr. *Isambard Brunel*, D.C.L., and Mr. *Arthur James Day*.

*Ordered*, That the Committee be adjourned till Friday the 5th of May, at Twelve o'clock.

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## *Die Veneris*, 5° *Maii* 1876.

LORDS PRESENT:

| | |
|---|---|
| Lord Archbishop of Canterbury. | Viscount Halifax. |
| Marquess of Salisbury. | Lord Bishop of Gloucester and Bristol. |
| Lord Steward. | Lord Winmarleigh. |
| Earl Stanhope. | |
| Earl Nelson. | |

The Lord ARCHBISHOP OF CANTERBURY in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Monday the 3rd of April last are read.

The Title of the Bill is read, and postponed.

The Preamble of the Bill is also read, and postponed.

Clauses 1, 2, and 3, are read.

Clause 4 is read, and it is moved by the Chairman to resolve—

"That from and after the passing of this Act, all property, real and personal, at the date of such passing belonging to any person as holding any of the following offices:

"The offices mentioned in Schedule (A.) to this Act;

"The offices which are directed by this Act to be united to any of the offices mentioned in Schedule (B.) to this Act;
"The offices mentioned in Schedule (B.) to this Act;

shall vest in some permanent body, subject to all tenancies, charges, incumbrances, rights, or liabilities affecting the same.

"Such resolution shall not extend to any such premises, so long as they shall be used for the transaction of the business of any such offices."

The same is agreed to.

Clause 4 is again read, and postponed.

Clause 5 is read, and postponed, and Schedule (A.) to which it refers, is then considered.

It is moved by the Chairman to resolve, That the office of Registrar of a diocese ought to be held during pleasure.

Objected to.—On Question:

| Content. | Not Content. |
|---|---|
| Lord Archbishop of Canterbury. | Lord Steward. |
| Marquess of Salisbury. | Earl Nelson. |
| Earl Stanhope. | |
| Viscount Halifax. | |
| Lord Bishop of Gloucester and Bristol. | |
| Lord Winmarleigh. | |

The Resolution is again read, and agreed to.

It is moved by the Chairman to resolve—

"That no person shall hereafter be appointed to the separate offices of—

"Registrar of the Arches Court of Canterbury;
"Registrar of the office of Faculties to the Archbishop of Canterbury;
"Commissary General of the city and Diocese of Canterbury;

but that the duties now performed by them shall be performed by the Registrar of the Province of Canterbury.

"That no person shall hereafter be appointed to the separate offices of official principal of the Consistory Court of the Diocese of York, but that the duties now performed by him shall be performed by the Vicar General of the Archbishop and Province of York.

"That any duties now performed by the official of any Archdeacon or Archidiaconal Court, shall, if not performed by the Archdeacon himself, be performed by the Registrar of the diocese.

"That the duties now performed by the official and Registrar of any Commissary or Peculiar Ecclesiastical Court (other than the Court of the Dean or the Dean and Chapter of a Cathedral or Collegiate Church) shall be performed by the Registrar of the diocese.

"That the office of Commissary be abolished.

"That no separate person shall be appointed hereafter to the office of record keeper, sealer, or seal keeper, but the duties of these officers shall be performed by the Registrar of the province or diocese respectively."

The same is, after discussion, agreed to.

It is then moved by the Earl Nelson to resolve—

"That the office of Secretary of a Bishop may be continued, but that if so continued, the salaries of the separate offices of Registrar of the diocese and of Secretary to the Bishop shall not exceed the sum which may be assigned to the office of Registrar, if the duties of both offices be performed by the same person."

The same is agreed to.

It is moved by the Chairman to resolve—

"That one apparitor in each diocese shall perform all the duties now performed by the undermentioned officers, viz.:—

| | |
|---|---|
| "Apparitor General. | "Clerk of County. |
| "Deputy Apparitor. | "Cryer of Court. |
| "Sub-Apparitor. | |

And shall hold his office during the pleasure of the Bishop."

The same is agreed to.

It is then moved by the Lord Steward to resolve, That the remuneration of the officers of diocesan courts be defrayed out of a Diocesan Fee Fund.

Objected

Objected to; and it is moved by the Viscount Halifax to leave out "Diocesan Fee Fund," and to insert "Central Fee Fund," in lieu thereof.

Objected to.—On Question, That "Diocesan Fee Fund" stand part of the Resolution:

| Content. | Not Content. |
|---|---|
| Marquess of Salisbury. | Lord Archbishop of Canterbury. |
| Lord Steward. | Earl Stanhope. |
| Earl Nelson. | Viscount Halifax. |
| | Lord Bishop of Gloucester and Bristol. |
| | Lord Winmarleigh. |

On Question, That the Resolution, as amended, be agreed to;

*Ordered*, That the Committee be adjourned till Monday next, at Twelve o'clock.

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## *Die Lunæ*, 8° *Maii* 1876.

LORDS PRESENT:

| | |
|---|---|
| Lord Archbishop of Canterbury. | Viscount Halifax. |
| Lord Steward. | Lord Bishop of Gloucester and Bristol. |
| Earl of Shaftesbury. | Lord Bishop of Ely. |
| Earl Stanhope. | Lord Winmarleigh. |
| Earl of Powis. | |
| Earl Nelson. | |

The Lord ARCHBISHOP OF CANTERBURY in the Chair.

Order of adjournment read.

The proceedings of the Committee of Friday last are read.

It is moved by the Viscount Halifax to resolve, That the remuneration of the officers of diocesan courts be defrayed out of a Central Fee Fund.

Objected to.—On Question:

| Content. | Not Content. |
|---|---|
| Lord Archbishop of Canterbury. | Lord Steward. |
| Earl of Shaftesbury. | Earl of Powis. |
| Earl Stanhope. | Earl Nelson. |
| Viscount Halifax. | |
| Lord Bishop of Ely. | |
| Lord Winmarleigh. | |

It is then moved by the Chairman to resolve—

"That the remuneration of officers, provincial and diocesan, shall be paid by salary.

"That such salaries shall be paid out of the Central Fund.

"That the Ecclesiastical Commissioners for England be authorised to advance from their common fund to the Ecclesiastical Fees Fund such sums as may be necessary to provide for the payment of such sums as may from year to year be required for carrying into effect the provisions of this Act, and for the payment of any of the sums directed to be paid under sections fifty, fifty-one, fifty-three, fifty-four, fifty-five, and fifty-six of this Act, or any of such sections, and for the payment of the salary of the clerk of the provincial judge, or for any such payments not exceeding in the whole the sum of 10,000 *l.*

"Such sums so advanced shall be repaid from the Ecclesiastical Fees Fund to the common fund of the said Commissioners, as soon as conveniently may be, together with interest at the rate of four pounds per centum per annum.

"That such Central Fee Fund be vested in the Ecclesiastical Commissioners for England.

"That a central body be charged with the duty of carrying this Act into effect, by means of rules and orders."

The same is, after discussion, agreed to.

It is then moved by the Viscount Halifax to resolve—

"That the Central Body shall consist of the Archbishop of Canterbury, the Lord Chancellor, and the Archbishop of York, and such other Members of Her Majesty's Most Honourable Privy Council as the Queen may, under Her Sign Manual, from time to time appoint."

Objected to; and it is moved by the Lord Steward to leave out from "That," to the end of the Resolution, and to insert "it is expedient that the Central Body should, in the first instance, be appointed by a Royal Commission," in lieu thereof.

On Question, That the words proposed to be left out, stand part of the Resolution;

| Content. | Not Content. |
|---|---|
| Lord Archbishop of Canterbury. | Lord Steward. |
| Earl of Shaftesbury. | Earl Nelson. |
| Earl Stanhope. | Lord Bishop of Ely. |
| Earl of Powis. | |
| Viscount Halifax. | |
| Lord Bishop of Gloucester and Bristol. | |
| Lord Winmarleigh. | |

The Resolution is then again read, and agreed to.

It is moved by the Chairman to resolve—

"That there shall be an advising body representative of the interests of the several dioceses, which shall meet within three months of the passing of this Act, to make recommendations to the Central Body."

The same is agreed to.

The Resolutions, as agreed to by the Committee, are then again read, and are as follows, viz.:

*Resolved*, "That from and after the passing of this Act, all property, real and personal, at the date of such passing belonging to any person as holding any of the following offices:

"The offices mentioned in Schedule (A.) to this Act;

"The offices which are directed by this Act to be united to any of the offices mentioned in Schedule (B.) to this Act;

"The offices mentioned in Schedule (B.) to this Act;

shall vest in some permanent body, subject to all tenancies, charges, incumbrances, rights, or liabilities affecting the same.

"Such resolution shall not extend to any such premises, so long as they shall be used for the transaction of the business of any of such offices.

"That the office of registrar of a diocese ought to be held during pleasure.

"That no person shall hereafter be appointed to the separate offices of—

"Registrar of the Arches Court of Canterbury;

"Registrar of the office of Faculties to the Archbishop of Canterbury;

"Commissary General of the city and Diocese of Canterbury;

but that the duties now performed by these registrars shall be performed by the Registrar of the Province of Canterbury, and the duties performed by the commissary general shall be performed by the vicar general.

"That no person shall hereafter be appointed to the separate office of official principal of the Consistory Court of the diocese of York, but that the duties now performed by him shall be performed by the vicar general of the archbishop and province of York.

"That any duties now performed by the official of any archdeacon or archidiaconal court, shall, if not performed by the archdeacon himself, be performed by the registrar of the diocese.

"That the duties now performed by the official and registrar of any commissary or peculiar Ecclesiastical Court (other than the Court of the Dean or the Dean and Chapter of a Cathedral or Collegiate Church) shall be performed by the registrar of the diocese.

"That the office of commissary be abolished.

"That no separate person shall be appointed hereafter to the office of record keeper, sealer, or seal keeper, but the duties of these officers shall be performed by the registrar of the province or diocese respectively.

"That the office of secretary of a bishop may be continued, but that if so continued, the salaries of the separate offices of registrar of the diocese and of secretary to the bishop shall not exceed the sum which may be assigned to the office of registrar, if the duties of both offices be performed by the same person.

"That one apparitor in each diocese shall perform all the duties now performed by the undermentioned officers, viz.:

| | |
|---|---|
| "Apparitor General. | "Clerk of County. |
| "Deputy Apparitor. | "Cryer of Court. |
| "Sub-Apparitor. | |

And shall hold his office during the pleasure of the bishop.

"That the remuneration of the officers of diocesan courts be defrayed out of a central fee fund.

"That the remuneration of officers, provincial and diocesan, shall be paid by salary.

"That such salaries shall be paid out of the central fund.

"That

"That the Ecclesiastical Commissioners for England be authorised to advance from their common fund to the Ecclesiastical Fees Fund such sums as may be necessary to provide for the payment of such sums as may from year to year be required for carrying into effect the provisions of this Act, and for the payment of any of the sums directed to be paid under sections fifty, fifty-one, fifty-three, fifty-four, fifty-five, and fifty-six of this Act, or any of such sections, and for the payment of the salary of the clerk of the provincial judge, or for any such payments not exceeding in the whole the sum of 10,000*l.*

"Such sums so advanced shall be repaid from the Ecclesiastical Fees Fund to the common fund of the said Commissioners, as soon as conveniently may be, together with interest at the rate of four pounds per centum per annum.

"That such central fee fund be vested in the Ecclesiastical Commissioners for England.

"That a central body be charged with the duty of carrying this Act into effect, by means of rules and orders.

"That the central body shall consist of the Archbishop of Canterbury, the Lord Chancellor, and the Archbishop of York, and such other Members of Her Majesty's Most Honourable Privy Council as the Queen may, under Her Sign Manual, from time to time appoint.

"That there shall be an advising body representative of the interests of the several dioceses, which shall meet within three months of the passing of this Act, to make recommendations to the central body."

The Clauses of the Bill are then severally read.

Clauses 1 to 5 are read, and postponed.

Clauses 6 to 15 are read, and Amendments are made therein.

Clause 16 is read, and negatived.

Clauses 17 to 21 are read, and Amendments are made therein.

*Ordered*, That the Committee be adjourned till Tuesday, the 16th of May, at Twelve o'clock.

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## *Die Martis*, 16° *Maii* 1876.

LORDS PRESENT:

| | |
|---|---|
| Lord Archbishop of Canterbury. | Earl Nelson. |
| Lord Steward. | Viscount Halifax. |
| Earl of Shaftesbury. | Lord Bishop of Ely. |
| Earl Stanhope. | Lord Hatherley. |
| Earl of Powis. | Lord Winmarleigh. |

The Lord ARCHBISHOP OF CANTERBURY in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Friday the 5th of May last, are read.

Clauses 22 to 35 inclusive, are read, and Amendments are made therein.

Clauses 36 and 37 are read, and negatived.

Clause 38 is read, and it is moved by the Viscount Halifax to leave out the Clause.

Objected to.—On Question:

| Content. | Not Content. |
|---|---|
| Lord Archbishop of Canterbury. | Earl of Shaftesbury. |
| Lord Steward. | Viscount Halifax. |
| Earl Stanhope. | Lord Hatherley. |
| Earl of Powis. | Lord Winmarleigh. |
| Earl Nelson. | |
| Lord Bishop of Ely. | |

Clause 39 is read, and negatived.

It is then moved by the Earl of Powis to insert a clause providing for the representation upon the Council of the Clergy and Ecclesiastical Officers of the dioceses in each province.

Objected to.—On Question:

| Content. | Not Content. |
|---|---|
| Lord Archbishop of Canterbury. | Lord Steward. |
| Earl of Powis. | Earl Stanhope. |
| Viscount Halifax. | Earl Nelson. |
| Lord Bishop of Ely. | |
| Lord Hatherley. | |
| Lord Winmarleigh. | |

Clause 40 is read, and Amendments are made therein.

It is then moved by the Chairman to insert "the provincial judge, if a Privy Councillor."

Objected to.—On Question:

| Content. | Not Content. |
|---|---|
| Lord Archbishop of Canterbury. | Earl Nelson. |
| Earl Stanhope. | Viscount Halifax. |
| Earl of Powis. | Lord Hatherley. |
| | Lord Winmarleigh. |

Sub-section 3 of Clause 40 is read, and Amendments are made therein.

It is then moved by the Lord Steward to leave out Sub-section 3.

Objected to.—On Question, That Sub-section 3, as amended, stand part of the Clause:

| Content. | Not Content. |
|---|---|
| Lord Archbishop of Canterbury. | Lord Steward. |
| Earl Stanhope. | Earl of Powis. |
| Viscount Halifax. | Earl Nelson. |
| Lord Hatherley. | |
| Lord Winmarleigh. | |

Sub-section 5 is read, and it is moved by the Earl of Powis to leave out "and at the election of a proctor to convocation," in line 5, of the Sub-section.

Objected to.—On Question, That the words proposed to be left out stand part of the Sub-section:

| Content. | Not Content. |
|---|---|
| Lord Archbishop of Canterbury. | Earl of Shaftesbury. |
| Earl Stanhope. | Earl of Powis. |
| Lord Hatherley. | Earl Nelson. |
| Lord Winmarleigh. | Viscount Halifax. |

The Division being equal, it is resolved in the negative.

Clauses 41, 42, and 43, are read, and Amendments are made therein.

*Ordered*, That the Committee be adjourned till Friday next, at Twelve o'clock.

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## *Die Veneris*, 19° *Maii* 1876.

LORDS PRESENT:

| | |
|---|---|
| Lord Archbishop of Canterbury. | Earl Nelson. |
| Lord Steward. | Viscount Halifax. |
| Earl Stanhope. | Lord Bishop of Ely. |
| Earl of Powis. | Lord Winmarleigh. |

The Lord Archbishop of Canterbury in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Tuesday last are read.

Clauses 44, 45, and 46 are read, and Amendments are made therein.

Clause 47 is read, and negatived.

Clauses

Clauses 48 and 49 are read, and Amendments are made therein.

Clause 50 is read, and it is moved by the Earl of Powis to leave out from " annum," in line 6, to the end of the Clause.

The same is negatived.

Clauses 51 to 54 are read, and Amendments are made therein.

Clause 55 is read, and negatived.

Clause 56 to 59 are read, and Amendments are made therein.

Clause 60 is read, and negatived.

Clauses 61 and 62 are read, and Amendments are made therein.

Clauses 4 and 5 are again read, and Amendments are made therein.

Schedule (A.) is read, and Amendments are made therein.

Schedule (B.) is read, and Amendments are made therein.

It is then moved by the Earl Nelson to fill up the blank in line 3 with " 2,000 *l.*"

Objected to.—On Question:

| Content. | Not Content. |
|---|---|
| Lord Steward. | Lord Archbishop of Canterbury. |
| Earl of Powis. | Viscount Halifax. |
| Earl Nelson. | |
| Lord Bishop of Ely. | |
| Lord Winmarleigh. | |

Schedules (D.) and (E.) are read, and Amendments are made therein.

*Ordered,* That the Committee be adjourned till Friday next, at Twelve o'clock.

---

## *Die Veneris,* 26° *Maii* 1876.

LORDS PRESENT:

| | |
|---|---|
| Lord Archbishop of Canterbury. | Lord Bishop of Gloucester and Bristol. |
| Earl Stanhope. | Lord Bishop of Ely. |
| Earl of Powis. | Lord Winmarleigh. |
| Earl Nelson. | |
| Viscount Halifax. | |

The Lord ARCHBISHOP OF CANTERBURY in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Friday last are read.

The Bill, as reprinted with the Amendments, is laid before the Committee by the Chairman.

The Clauses of the Bill are severally read, further Amendments are made therein, and the same, as amended, are agreed to.

The Preamble of the Bill is again read, and agreed to.

The Title of the Bill is also again read, and agreed to.

The Draft of a Report having been prepared, the same is read by the Clerk, and agreed to. (*Vide* the Report.)

*Ordered,* That the Lord in the Chair do make the said Report, and do report the Bill, with the Amendments thereto, to the House.

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# MINUTES OF EVIDENCE.

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# *Die Lunæ*, 20° *Martii* 1876.

PRESENT:

| | |
|---|---|
| Lord Archbishop of CANTERBURY. | Viscount CARDWELL. |
| LORD STEWARD. | Lord Bishop of ELY. |
| Earl STANHOPE. | Lord STRAFFORD. |
| Earl NELSON. | Lord HATHERLEY. |
| Viscount HALIFAX. | Lord WINMARLEIGH. |

THE LORD ARCHBISHOP OF CANTERBURY, IN THE CHAIR.

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MR. CHARLES JAMES MONK, M.P., attending, is Examined, as follows:

Mr. *Monk*, M.P.
20th March 1876.

1. *Chairman.*] You are Chancellor of the Diocese of Gloucester and Bristol?
I hold two distinct offices; namely, Chancellor of Gloucester and Chancellor of Bristol.

2. The office of Chancellor, as I understand it, really consists of two offices, the Judge of the Consistorial Court, and the Vicar General of the Bishop?
It does so.

3. And these two offices are in almost every instance united in one person, under the name of the Chancellor?
I believe, without exception.

4. Except in the provincial and diocesan Courts of Canterbury, in which there is a Chancellor for the diocese, and a Vicar General for the province?
That is so.

5. Besides the Dean of the Arches?
Yes.

6. The duties of the Chancellor are two-fold; let us first direct our attention to the office of Judge of the Consistorial Court; is the number of cases coming before the Consistorial Court considerable?
Latterly, there have been few, if any, opposed cases in our diocese.

7. All those cases which come under the Church Discipline Act are almost invariably sent straight to the Court of Arches, by Letters of Request, as I understand?
That is so.

8. The Church Discipline Act did provide that the bishop might, if he pleased, sit with each chancellor in the first instance in such cases?
He has that power.

9. That power you say has been rarely exercised?
Very rarely indeed.

10. Do you happen to know if it was ever exercised, except in one case by the Bishop of Exeter, and in one case by the Bishop of Manchester?
I think it was also exercised by the Bishop of Bath and Wells in the case of Archdeacon Denison; I do not know of any other.

Mr. *Monk*, M.P.
20th March 1876.

11. That was a peculiar case, if you remember, the living being in the patronage of the bishop, and the bishop being represented by the archbishop of the province?
Yes; I do not recollect any other cases.

12. So that during the 40 years during which the Church Discipline Act has been in operation there are only, as far as you know, three at the most, and probably only two cases in which the Consistorial Court has been called into operation under the Church Discipline Act?
I cannot charge my memory with any other.

13. But there are other cases besides those which come under the Church Discipline Act which do come before the Consistorial Court?
They come direct before the Chancellor of the diocese.

14. Will you kindly mention what sort of cases these are?
Where a person has attempted to break into a belfry to ring the bells of the church, or has taken possession of the keys of a church against the will of the incumbent; such cases would come before the Consistorial Court; also all faculty cases, either for alterations in the church or for the removal of a body from consecrated ground.

15. Is it usual for these cases to be tried in the Consistorial Court or to go at once to the Arches?
Those cases are almost invariably heard in the Consistorial Court of the diocese.

16. So that the chancellor must have a certain amount of work as judge in such cases?
He has so, but in unopposed cases, it is usual, unless a caveat is entered, not to hold the Court but to grant a faculty after giving notice to persons interested.

17. So that it is only in cases of disputed faculties that the matter comes regularly into Court?
Yes, so far as faculties are concerned.

18. Are these disputed cases generally decided, in the first instance, in the Consistorial Court, or sent by Letters of Request to the Arches?
As far as my own experience is concerned, they have always come before me as Judge of the Consistorial Court; I have also had cases with regard to the placing of the Ten Commandments at the east end of the church; these are rare.

19. The disputes as to pews, I suppose, are not uncommon?
Not uncommon; cases with regard to pews are seldom, I think, settled in the Consistorial Court; there is generally some temporal right or prescriptive right with which the Ecclesiastical Court is unable to deal satisfactorily in those cases.

20. Can you at all tell us how many times it has been necessary for you to sit in Court during the last year, for example?
Last year I have not sat in Court once.

21. And the previous year?
I am unable to say; I believe I held one Court only in 1874; but within the last five or six years I have sat very seldom in Court; I have very seldom had any question brought into Court.

22. The formal business is generally done in chambers?
It is so.

23. But then besides the duties of the chancellor, as Judge of the Consistorial Court, he is also the adviser of the bishop in legal matters?
I consider that the principal duty of the chancellor is to act as legal adviser to the bishop of the diocese; he has many cases submitted to him by the bishop; in fact, he is his standing counsel.

24. And all formal documents of consecration, and so forth, are submitted to the chancellor, or at all events he is responsible for them?

They

They are invariably submitted to him; they are always submitted to me, and are settled by me.

25. The amount of business of that kind is considerable?
Considerable.

26. It depends of course upon the number of churches consecrated in a diocese in the course of the year, and churchyards, and so forth?
Yes, all faculties are submitted to the chancellor for his perusal, and are settled by him before they go under seal.

27. You are of opinion that the chancellor is an officer with whom the bishop cannot dispense?
If the office of chancellor were to be abolished the bishop would be subjected to very considerable expense in submitting cases to counsel for opinion; I do not think that the bishop has such legal knowledge that he could possibly carry on the business of his diocese without a legal adviser.

28. What is the relation then between the bishop's secretary and the chancellor, because in one sense the bishop's secretary is considered the legal adviser of the bishop?
There is no connection whatever between the chancellor and the secretary; the registrar is an officer with whom the chancellor is closely connected, and who communicates with him on all matters connected with the diocese; the secretary occasionally may write to the chancellor on the part of the bishop asking for his advice and submitting a case for his opinion.

29. But, with regard to all important matters, the chancellor considers himself responsible as the legal adviser of the bishop?
Undoubtedly so.

30. The registrar acts as Registrar of the Consistorial Court?
He does.

31. He also acts as registrar of most of the acts that are performed by the bishop officially, does he not?
He does so; and there are numerous Acts of Parliament which require that legal documents shall be registered by the registrar; in fact, all Orders in Council connected with the diocese have to be registered in the registry of the Consistorial Court by the registrar.

32. Are you aware that there is in every diocese a registry of a more private nature, called the Act Book?
We have an Act Book in our Consistorial Court, but that is merely for registering the acts done or "sped" in open court.

33. But you have no knowledge of another register, which does exist in most dioceses?
Does your Grace mean of a private nature?

34. More private than the register of the court, but still a public document, capable of being referred to; as to ordinations, for example, would the names of the persons ordained be entered in the registry of the diocese?
Yes, certainly; I believe that that is so. The registrar is always present at the ordination, and I cannot state from my own knowledge, but I believe that he registers the names.

35. Perhaps, in the diocese of Gloucester, the registrar is also secretary to the bishop?
You will remember that there are two registrars and two distinct registries in the dioceses of Gloucester and Bristol. When the bishop performs any episcopal act in the Bristol part of the diocese, that is registered in the registry of Bristol; when in that of Gloucester, in the registry of Gloucester. The bishop's secretary in the Gloucester part of the diocese is not the same person as the registrar.

36. Is he in the Bristol part?
Yes, I think he is so.

37. You do not feel perfectly certain that the registrar is always present at ordinations; it may be the bishop's secretary?

 I cannot

Mr. *Monk*, M.P.

20th March 1876.

I cannot speak positively upon that point; I do not attend officially myself upon these occasions, but until within the last few years the bishop's registrar and the bishop's secretary were the same in both parts of the diocese; therefore, when I have been present, I have always seen the registrar present, but he may have been present only as bishop's secretary.

38. Are you officially present at consecrations?
Always so, unless I am unavoidably prevented, when one of my surrogates would attend for me; but, as a rule, I always attend.

39. The consecration of a church is, in fact, the holding of a court?
It is so.

40. A petition is presented, and objections might be made, and the chancellor is there to assist the bishop as judge?
Yes, objections have been made on that occasion, and the bishop has, within my knowledge, given judgment on a question which arose at a consecration.

41. The same may be said of visitations, may it not?
Yes, certainly.

42. Are you, as chancellor, generally present at visitations?
Always.

43. The bishop then holds a court, and has the chancellor with him as his legal adviser?
As his legal adviser and assessor.

44. I presume the bishop presides at that court, both in the case of consecrations and visitations?
At visitations the bishop presides at the court when the clergy and the churchwardens are called; but the chancellor presides at another court in order to admit the churchwardens; the bishop presides at the visitational court.

45. Then churchwardens are admitted at visitations, are they?
In our diocese they are.

46. During those years when the bishop does not visit, the archdeacon visits?
He does so.

47. And the churchwardens, according to law, must be admitted either at an archdiaconal visitation, or at an episcopal visitation?
Yes, that is the practice; they might be admitted, and sometimes are admitted previously: but a churchwarden is not confirmed in his office until he is admitted by the ordinary or by his officer.

48. Do you mean that he would not be able to perform the duties of his office without being admitted?
Decidedly he would not.

49. If any one were to dispute his authority he could not enforce it?
I believe it is so; under the 118th canon, churchwardens continue in office until their successors are admitted, and consequently when a bishop does not hold his visitation, as is very often the case, until the month of September or October, a churchwarden who was elected at Easter may not be confirmed in his office until half his year of office has elapsed, and serious difficulties may possibly arise from that circumstance.

50. Then you consider that under that canon he is entitled to act before he is admitted?
No, I consider that he is not; I consider that the churchwardens who were admitted in the previous year continue to be the churchwardens until their successors are admitted.

51. In the case of a churchwarden having been continued in the office for a number of years, is it expected that he shall show himself to be admitted each year?
It is expected; he is always summoned, and if he appears he is admitted for the current year.

52. And

52. And if he does not come?
I know of no means to enforce his presence.

53. Then do you consider that he is legally a churchwarden for a new year until he is re-admitted?
That is my opinion.

54. So that a man might go on for 20 years as churchwarden, having been admitted at the beginning of the 20 years?
That is my opinion.

55. Legally, you think that might happen?
Legally, I think so.

56. So that the obligation to pay the fee is not a very strict one?
It is of a very loose nature.

57. The fee is considerable, is it not; it varies in different dioceses, I believe?
No, I do not believe it varies. I think it was fixed by a table, and under the authority of your Grace, the Archbishop of York, and the Lord Chancellor.

58. Do you think it is as much as 18 *s.*?
It is between 14 *s.* and 18 *s.*, I forget the exact amount. I was not prepared to give evidence upon that point.

59. Earl *Nelson.*] I think it is 13 *s.* in our diocese?
I thought it was not as much as 18 *s.*, but I am unable to say the exact sum; I may be wrong, but I thought there was a uniform fee under the table of fees, which was sanctioned by Order in Council.

60. *Chairman.*] The mode of paying by fees is the usual mode?
It is so.

61. Does it appear to you to be a good system?
No; very strong objections are made to it. With regard to the churchwardens' fees, the churchwardens, in many cases, have no means of recouping themselves, and they naturally object to be out of pocket to the amount of the fees.

62. Then it is not to the particular form of levying the fee, but to the fact of a fee at all, that the objection is naturally felt?
It is so, in the case of churchwardens.

63. You perceive that in the Bill which lies before the Committee it is proposed to collect all fees by stamps; do you think that that would at all lessen the objection to the payment of them?
I think it would; I approve altogether of that proposition. At the same time, I think it would be more desirable that the stamps should be procured from the Inland Revenue officers, and not from the registrars themselves.

64. Do you think that a man would be more willing to pay for a stamp than to pay a fee?
No, I do not see that. When I said that I thought that it was more desirable that the fees should be paid by stamps than collected in money, I simply meant that I thought it was desirable that the same practice which obtains now generally in judicial proceedings, namely, the payment of fees by stamps, should be adopted also by the Ecclesiastical Courts; I did not mean that persons would be more ready to pay for the stamps than they would be to pay the fees in money.

65. The fees are at present generally collected at the visitations, are they not?
Yes, they are.

66. Is there anything disagreeable at times in the vestry?
The fees are never paid in the vestry; they are always paid at the hotel, I think, where the registrar's clerk is.

67. Afterwards?
No; where they are paid at all they are usually paid before the churchwardens come to be admitted. I should be very desirous myself to see the fee altogether remitted for the attendance of churchwardens to be admitted.

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68. I suppose that would be a considerable sum, would it not?
It amounts to a considerable sum.

69. I presume you mean that you would be glad if it could be remitted, and if the money could be raised from some other source?
If the registrars could be paid from some other source.

70. Is there any other mode which occurs to you by which the money required could be obtained without charging a fee at the visitations on the admission of churchwardens?
I think it would be desirable that churchwardens should be admitted at other times than at visitations. I see no reason why a churchwarden should not be admitted either by the rural dean or by the incumbent of the parish of which he is elected a churchwarden; in that case the churchwarden might be admitted on the same day that he was appointed or elected churchwarden; in that case no fee would be necessary for admission.

71. Would that destroy the obligation for the presence of the churchwarden at the visitation?
Not at all; the churchwardens would be summoned, as they are at present, to attend the visitations, and would be expected to attend. A clause might be inserted, reserving the right of the bishop or the archdeacon to summon them to visitations.

72. Perhaps you think they would be more willing to attend if they had not to pay a fee?
I think that would be the case.

73. At all events, something might be said on both sides?
Yes. Might I be allowed to hand in a clause which I have prepared to that effect?

74. Will you read it?
I would propose to alter Clause 42 in the following manner, by leaving out the present clause, and inserting, "Any person duly elected churchwarden at a vestry meeting, or duly nominated or appointed churchwarden, may, if he think fit, in the presence of the incumbent of the parish, or of the rural dean, sign the following declaration: 'I, A. B., do sincerely declare that I will faithfully and diligently perform the duties of the office of churchwarden for the parish of , to the best of my ability, according to law.' The registrar of the diocese within which such parish shall be situate shall issue forms of declaration on the application of the incumbent or of the churchwardens, and shall register the name of each person so signing the same, upon receiving the same duly signed and attested by the incumbent or rural dean before whom the declaration was made, without any payment whatsoever; and every declaration so made and registered shall be as valid and effectual in law as if it had been made in the manner prescribed by the Act of the fifth and sixth William the Fourth, chapter 62, section 9: Nothing herein contained shall affect the right of any ordinary to require the attendance of churchwardens at the visitation of such ordinary."

75. Did I understand that you said that no fee was to be paid?
That is what I proposed.

76. Then from what source do you propose that the income at present raised should be procured?
I understand that under this Bill the registrars are to be paid a fixed salary; and I believe that the amount which will be raised is more than sufficient to pay the salaries of the registrars and the judges under this Bill.

77. So that if it were possible by economising the present system to diminish the expense of the payments to officers, you think the natural fee to be remitted would be that at present paid by the churchwardens?
I think so. It is considered a great grievance by churchwardens generally to be called upon to pay this fee. As an instance, I may mention that in one very large deanery in our diocese, out of 42 parishes, the churchwardens of six only paid the fee.

78. Do you suppose that they attend at the visitations?
Most of them attend at the visitations.

79. They

79. They were admitted without paying the fee?
Yes, it was so. I consider that I have no power to repel a churchwarden when he presents himself, and requires me to admit him; I think I am bound to do so.

80. Are you aware that the objection to pay fees is not confined to churchwardens?
Certainly.

81. That the clergy also think their fees ought to be remitted?
Yes.

82. Does it appear to you to be more fair that the churchwardens should be relieved than the clergy?
I think the clergy should be relieved to a certain extent.

83. As far as economy will allow?
There is just this difference; the churchwardens are called upon to perform their functions without receiving any salary or stipend; it is not the same case with regard to the incumbents of benefices.

84. Are you aware that there is dissatisfaction with regard to the sums paid for faculties, for example, throughout the country?
I have not heard any objections in our diocese.

85. Do you happen to know how much the charges for a faculty are in your diocese?
I cannot say exactly.

86. They are according to Table?
The charge is strictly under the Table which was framed or sanctioned by your Grace.

87. Then you think that the object of a Bill of this kind ought to be by economising the salaries of the officers; to diminish the fees paid?
I do.

88. Do you see any objection to promoting this economy by the amalgamation of some of the offices?
I think that is most desirable.

89. Will you mention any offices which you think ought to be amalgamated?
I approve entirely of the schedules to this Bill. I see no objection to any office that is abolished under this Bill being so abolished.

90. You are aware that under this Bill a salary would be provided for the Judge of the Arches and the Chancellor of York?
Yes, I am.

91. Larger than at present?
Yes.

92. Perhaps you are aware that considerable dissatisfaction has been expressed on that subject?
Yes.

93. As a matter of fact, you have stated that the Judge of the Arches performs a good deal of that duty which would naturally fall on the Chancellor?
Yes.

94. Because cases are sent to him by Letters of Request?
Yes.

95. Does it, therefore, appear to you fair, that in distributing the salaries between the Chancellor and the Judge of the Arches, the Judge of the Arches should have a larger share than the Chancellor?
Undoubtedly. The office of Judge of the Arches is of much greater importance than that of Chancellor of the Diocese. He will have much more work to perform, and therefore he is entitled to a far larger salary.

96. And by the system of Letters of Request, a large portion of the work of the Consistorial Courts is really done by him?
It is so.

 97. So

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97. So much so that the Consistorial Courts, as I think you said, originally had very little work to do at all?
The courts have very little opposed business before them now.

98. Do you wish to make any statement with regard to this Bill; is there anything that strikes you in this Bill which you would like to see amended?
I have already mentioned that in our own diocese there are two distinct Consistorial Courts with separate jurisdiction, and there are two registrars, and two registries in which all the legal documents of the diocese are registered and kept. I think it desirable that there should continue to be two registries, both on the ground of convenience to the diocese in having an office within the Cathedral Cities of Gloucester and of Bristol, and also because, at some future day, it is possible that the diocese may be again divided.

99. Should you propose, then, for Gloucester and Bristol, that there should be one registry, but two officers?
I think there should be two registries. Acts which are performed by the bishop in the Bristol jurisdiction have to be confirmed by the Dean and Chapter of Bristol; and those performed in the Gloucester part of the diocese have to be confirmed by the Dean and Chapter of Gloucester. It becomes almost necessary that there should be two registries.

100. Earl *Nelson*.] Then do you think that both of them should have the full salary, because the Bill, you will see, says that in every diocese there is to be one registrar; but if they have more than one, the salary is to be divided equally between the two?
I think the salary would not be sufficient if divided into two, if the registrar had to keep up the expense of a registry with the clerks, and so forth.

101. *Chairman*.] Is there any other point you would like to mention?
I do not remember any at this moment.

102. Viscount *Halifax*.] Is there any mode of enforcing the payment of fees by the churchwarden on admission?
Unless the parish has Church property upon which the fees may be legally levied, there is no means of enforcing it. There is no personal responsibility on the part of the churchwardens to pay the fees. Unless they have money in hand, which is applicable to such a purpose, namely, that of paying visitational fees, there is no means of enforcing the payment of it. It has been decided by the Court of Queen's Bench that it is not a personal liability on the part of the churchwardens.

103. Do I understand you, then, that if there was any property belonging to the parish, which was liable for such a purpose, and in that case alone, could the churchwarden recoup himself for the fees that he had paid?
He might be sued for them; the amount of the fees might be recovered by the registrar in the County Court in that case.

104. I suppose in ninety-nine parishes out of 100, there are no such funds, and therefore the churchwarden would have to pay the fee himself?
In the greater part of the parishes, there is no such property.

105. *Chairman*.] Does it not apply to church-rates. Was not it considered before the late legislation that the church-rates were liable as supplying the fees?
Yes, I believe the fee might be levyable out of the church-rate.

106. Is it not a fact that the church-rate has not been really abolished, but merely the obligation to pay it, and that therefore there is a voluntary parish-rate in a great many parishes at the present day?
It is so, undoubtedly.

107. Would not it be a legal source from which the fee might be paid?
The churchwarden might recoup himself out of it if it came into his hands.

108. Lord *Hatherley*.] The registrar might sue him for it in the County Court?
Yes, I suppose so.

109. Viscount

109. Viscount *Halifax.*] Do you think that the payment of church-rates, being now perfectly voluntary, a churchwarden would have a legal right to recover out of it any fees he might have so paid?

If that money came into his hands, I have no doubt he might recoup himself out of that rate. As a matter of fact, I believe that money very seldom comes into the hands of the churchwardens; it is generally held by the incumbent.

110. *Chairman*] That is not as it ought to be, I presume?

No.

111. Do you mean to say that if a parish voluntarily at a vestry meeting votes a church-rate, though there is no obligation to pay it, that money is paid into the hands of the incumbent, not into the hands of the churchwardens?

I was referring more to the Offertory, to money which was collected by an offertory for such a purpose. In the case of a voluntary church-rate it would undoubtedly be collected by the churchwardens.

112. Then do you mean to say that you think a churchwarden would have a legal right to recoup himself from the proceeds of the Offertory?

If that Offertory were collected for the purpose of meeting the expenses of the church, I think that he would be allowed to do so.

113. Earl *Stanhope.*] An endowment left for the maintenance of the church, of which I know several instances, would not be liable for the fees of the churchwardens, would it?

I think that the fees might be paid out of such an endowment if it were left for church purposes generally.

114. Bishop of *Ely.*] There has been a custom, I think, in the City of Bristol, where there is considerable vestry property, according to which all fees of this sort have been paid out of that property?

They are so paid.

115. Earl *Nelson.*] Are you aware that in some few instances a certain sum is insisted upon to be laid aside for the repairs of the church, before the church is consecrated?

Under certain Acts of Parliament a Repair Fund is set apart before a church is consecrated.

116. You do not know that in some dioceses it is made *sine quâ non* by the bishop that there should be that sum?

I am not aware that that is so.

117. In the case which occurs, I believe, in new parishes, there is a fund which has been specially set apart for the repair of the church. Do you think it would be right that the interest of that money should be taken to pay the fees of the churchwardens?

Certainly not.

118. Bishop of *Ely.*] Might I ask whether the clause which you suggested in lieu of Clause 42, is intended in all cases to substitute the admission of churchwardens before the incumbent or the rural dean in lieu of before the archdeacon at the visitation, or to give them the additional power of being so admitted in case of its being inconvenient to attend the visitation?

Merely to give them the option of being so admitted at an earlier period in their year of office.

119. Not to take away the power to admit them at the visitation?

On the contrary, I propose to insert a proviso that it shall not interfere in any way with the right of the Ordinary to require the attendance of churchwardens at his visitation?

120. For the purpose of admission?

It is merely to give them a facility of being admitted at an earlier period than the visitation. I should still consider that at the visitation the Ordinary, the archdeacon, or the bishop's officer, would hold a Court for the admission of churchwardens.

121. So that the normal state of things would still be, that they should be admitted

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admitted at visitations, but as an exceptional state of things they should be capable of being admitted by the incumbent otherwise?
Certainly.

122. Do I rightly understand that the cost of being admitted in an exceptional way, would be less than the cost of being admitted at visitations?
I consider that there should be no fee whatever taken for the admission of a churchwarden before the incumbent or the rural dean; that the fees should not be payable merely for the admission of the churchwarden, but that they should be visitational fees.

123. Then, in fact, there would be rather a premium upon a churchwarden getting himself admitted in that private manner, because that will cost nothing, whereas getting admitted at the visitation would cost him something?
I think that there should be no charge in any case for the admission of churchwardens. If it is thought right that the visitational fee should be continued, it must be so continued, but I should be very glad to see it abolished altogether, as I have already stated.

124. You would think it undesirable to do anything which would tend to draw off the churchwardens from attendance at visitations?
It is desirable to prevent that. A churchwarden is a temporal as well as an ecclesiastical officer.

125. Therefore any arrangement which should make it less expensive for a churchwarden to get into his office privately than it would be to get into his office for a visitation, would be so far undesirable?
For the parish, I do not think it would. We must look upon the churchwarden as an officer of the parish. As such, it must be desirable that he should be admitted at as early a period in his year of office as possible.

126. But that opinion of yours has relation only to the time at which he would get into office; you think that if he got into office earlier it would be better for the parish?
Yes; it must also be remembered that many churchwardens do not attend visitations; they make it a practice not to attend visitations. The consequence frequently is that for years together a parish has no churchwarden; I know many instances of it. In those parishes where the same person or persons are re-elected churchwardens, I believe that their legal title is unaffected, because, as I have already stated, I consider that the churchwarden holds office until his successor is appointed. But in cases where new churchwardens are elected each year, it is a matter of absolute necessity that they should be admitted as soon as possible.

127. But you still think, generally, that it would be desirable to preserve the attendance of the churchwardens at visitations wherever it could be done without inconvenience to the parish?
Certainly; I should do nothing to interfere with the right of the bishop or of the archdeacon, as Ordinary, to require the presence of churchwardens at visitations

128. *Chairman.*] You do not consider that their admission at visitations is necessary to induce them to come?
I do not think so, speaking from a long experience.

129. Bishop of *Ely.*] You think they would come as well as they do if they were privately admitted.
I think that most of them would continue to attend at the visitations; I am speaking more of the bishop's triennials, because I have had no experience with regard to archdeacons' visitations.

130. *Lord Steward.*] But then the archdeacon's visitation, as I understand the matter, happens two years out of the three.
It does so.

131. Therefore, your experience only relates to one year out of the three?
It is so; but the real evil arises in the year of the bishop's triennial, because in that year the bishop usually holds his visitation in the autumn, so that half of the churchwarden's year of office has expired before the visitation takes place.

132. The

132. The evil of which you complain, the postponement of the admission of churchwardens, arises from the fact that episcopal visitations take place in the autumn, but they occur only once in the three years, the archdeacon's visitations taking place earlier in the year; is not that so?
I believe the archdeacon's visitation does take place earlier in the year.

133. There is this distinction, is there not, between the fees paid by churchwardens and fees paid by the clergy, that the fees paid by the clergy come out of their own pockets, whereas the fees paid by the churchwardens are a charge upon the parish revenue, whether arising from church-rates or from similar sources?
My experience is that the fees paid by churchwardens in many instances come out of their own pockets.

134. In cases where there are no church-rates they may, but in cases where there is a church-rate a churchwarden always charges his ecclesiastical fees in his accounts for the year, does he not?
I imagine that there is not a church-rate in one parish out of six.

135. That is not exactly an answer to my question; my question was whether a churchwarden would recoup himself for his admission fee out of the church-rates, where there were any, and whether he was not legally justified in so doing?
I consider that he may recoup himself in that way.

136. Whereas the fees paid by the clergy are paid out of their own pockets?
Yes, out of the proceeds of their livings.

137. They have no means of recouping themselves from church-rates or any other known source?
Certainly not.

138. I understand you to say, earlier in your examination, that payment by stamps would lessen the objection to these fees; would you explain why or how?
I do not think that was exactly my answer.

139. *Chairman.*] I think I suggested that?
Yes.

140. *Lord Steward.*] May I take it that you think that payment by stamps would not lessen the objection to the fees?
I do not think it would act one way or the other. I stated that I thought that payment by stamps was a more convenient method than payment by money.

141. I think you went on to draw an analogy between the payment by stamps now enforced in judicial proceedings, and the payment of these fees?
Yes.

142. Is there not this great difference between them, that in the one case with regard to the admission of churchwardens, the churchwardens are admitted, and then the payment of fees is demanded, whereas in the other case the payment of the fees by stamps is a necessary preliminary to the judicial proceedings?
The payment of the fees is invariably demanded as a preliminary before the admission to the office of churchwarden.

143. I understand you to say that that was not the case?
It is demanded by the clerk of the registrar before the churchwardens attend in the vestry to be admitted to the office.

144. And in the event of a churchwarden not paying, is he admitted, or is he not admitted?
He is admitted.

145. Although the registrar has the knowledge that he has not paid, and that he is not going to pay the fee?
Yes; I may mention that a registrar has protested against the admission of a churchwarden within my experience, but I have always held that I am bound, and should be required by mandamus, to admit a churchwarden on presenting himself, and showing a title to be admitted as churchwarden.

146. Lord *Hatherley.*] And then the registrar must be left to sue for his fee?
Yes.

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147. *Lord Steward.*] In the case of judicial proceedings, stamps are necessarily a condition precedent; if it was necessary that a churchwarden should produce a stamped certificate, then, if the certificate was not stamped, you would not admit him?

My whole argument is, that the fees upon the admission of churchwardens should be abolished.

148. *Chairman.*] That they should not be paid by stamps, or in any other way?

Just so; that there should be no fee whatever upon the admission of a churchwarden.

149. *Lord Steward.*] With regard to the tenure of the office of chancellor, is it for life, or during good behaviour?

It is for life. The chancellor is appointed by patent.

150. Are you able to speak with certainty with regard to its being for life or for good behaviour?

The patent is confirmed by the Dean and Chapter, and it is for life.

151. How are the registrars appointed?

I believe the registrar is always appointed by patent.

152. And for life?

And for life, I believe; but I would rather you would put that question to some one who is more able to speak with certainty upon it.

153. By whom would the patent be drawn up?

By the registrar.

154. Would it not be settled by the chancellor?

There has been no registrar appointed in my diocese since I have been chancellor; therefore I have had no experience of it. I think it desirable that the registrar under this Bill should be appointed during good behaviour, and not during the pleasure of the bishop; I think it would be most undesirable that the registrar should be dismissed at the will of the bishop.

155. Will you give us your reasons for that opinion?

The registrar is in possession of very important documents. All the legal documents of the diocese are held by him, and all the acts of Court; the nominations of incumbents to their benefices; all the faculties which have been granted; in short, all the legal documents of the diocese.

156. Lord *Hatherley.*] He has the custody of all wills that have been proved, has he not?

I am not quite sure that those have not been removed now. It seems undesirable that all these documents should have to be changed about from one place to another at the will of the bishop.

157. *Lord Steward.*] They would not be changed from one place to another, would they?

Unless there is a registry office belonging to the diocese, which there is not in many cases.

158. I think you told us that the chancellor was the bishop's legal adviser?

He is so.

159. You see no objection to a new bishop taking over his predecessor's chancellor?

I do not know of any.

160. Would there not be less difficulty in taking over a predecessor's registrar than in taking over a predecessor's chancellor?

I do not see any difficulty or disadvantage in either case.

161. The fees now exacted are exacted in accordance with a Table which has been prepared by high authorities and approved by the Queen in Council, I think?

It is so.

162. Do you know whether that Table of Fees has given satisfaction or not?

I think it is considered to have been too high in some instances. I may mention

mention that there are provisions in the Act passed a few years ago, enabling those high officers to alter the Table of Fees if they thought proper, but I am not aware that any alteration has been made in it.

163. Have the fees been reduced?
I think not.

164. At all events, power was taken to alter them, in consequence of the dissatisfaction, which appeared to be serious?
Yes, power was taken to alter them.

165. *Chairman.*] I think you said you thought it desirable that the offices of secretary and registrar should be united?
I think so.

166. Do you think it desirable that the secretary should have an office for life?
If the two offices are to be united, I must give that answer. But with reference to the office of registrar, I am not aware that the registrar of any Court in this kingdom holds his office merely at pleasure. I do not say that it should be for life, but I think it should be during good behaviour. I do not know why an exception should be made in the case of the Ecclesiastical Courts.

167. Do you happen to know whether the Registrar General holds his office at the discretion of the Lord Chancellor or of the Crown?
I do not know.

168. Or whether the registrars throughout the country hold their offices at the discretion of the Registrar General?
I presume your Grace refers to the registrars of births and deaths. I do not know whether that is the case. In answer to the question which was asked of me just now by a noble Lord with regard to the appointing of new registrars, I should like to add that the title-deeds of all new churches, burial grounds, and glebe houses are in the custody of the registrar of the diocese, so that great inconvenience might arise from continually shifting these documents from the custody of one registrar to another, at the pleasure of the bishop.

169. In fact, you think it desirable that there should be a register office for every diocese, so that these documents should not be removed?
Most important.

170. Lord *Winmarleigh.*] Are there offices of that kind in all or most of the dioceses?
In many dioceses, but not in all.

171. In your diocese is that the case?
I believe the offices belong to the registrars themselves.

172. They are private property, not public property?
That is so. The diocesan registry at Gloucester is the same office as the registry of the Court of Probate, but I believe it to be the private property of the registrar.

173. *Chairman.*] According to a Paper laid before us the registrars and district registrars of the Probate Court hold office during good behaviour, subject to be removed by the Lord Chancellor, for some reasonable cause, to be in such order expressed (under the 20 & 21 Vict. c. 77, s. 19). But officers in the Supreme Court of Judicature may be removed by the persons having the right of appointment, with the approval of the Lord Chancellor, reasons being assigned in the order of removal. The superintendent registrar and registrars of marriages hold office at the pleasure of the Registrar General?
I have no doubt that is correct.

174. Bishop of *Ely.*] A deputy registrar has always been removable at pleasure, I think?
I think so.

175. Do you know whether any inconvenience of the character of those inconveniences to which you have alluded has resulted from the fact of his being removable at pleasure?
I have had no experience of deputy registrars.

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176. *Chairman.*] There have been a good many deputy-registrars, I think, in the Kingdom?
A great many.

177. The great registry of London, I think, was under a deputy registrar for a vast number of years?
I think it was.

178. With regard to the registry of Bath and Wells which has lately become vacant, I think Mr. Brownlow North was the registrar, and acted by deputy?
Yes.

179. Bishop of *Ely.*] Bristol has been held by a deputy registrar for some time, I think?
That is so, but the former deputy registrar is now the registrar.

180. And that was so at Gloucester, I think?
Yes, that was so at Gloucester; the present registrar was deputy before he was appointed to his present office. The registrar not being resident, and not performing the duties of the office, the Bishop had the power to appoint a deputy registrar.

181. And that deputy registrar had the custody of the books and documents to which you have alluded?
Yes.

182. And no inconvenience, so far as you know, arose from the fact that these documents were in the custody of a person holding his office at pleasure?
No, I am not aware of any inconvenience; I should add, that the person at Gloucester selected by the Bishop as deputy, was afterwards appointed registrar by him.

183. Then there would scarcely be reason to argue that the fact of the registrar holding his office at pleasure would be productive of any very great inconvenience if no such inconvenience has arisen from the fact of the deputy registrar holding his office at pleasure?
If you have a permanent registry where the documents will remain in safe custody, there will not be the same objection which there would be if the documents were to be shifted from one office to another on each change in a person holding the office of registrar.

184. *Chairman.*] Are you of opinion that that would be a very important improvement to have a fixed place for the registry?
I think it would be extremely desirable.

185. Viscount *Halifax.*] I have before me the great Register Act for this country, namely, the Births, Deaths, and Marriages Act, and I see that under it, the Registrar General is appointed by the Crown, and removable by the Crown?
I did not remember exactly how that was.

186. Lord *Winmarleigh.*] You stated, early in your evidence, that the business of your Court had been much less in the last year or two than it had been in former years?
In the last five or six years.

187. Can you assign any cause for that?
When first I was appointed Chancellor I had jurisdiction in testamentary matters, and also in matrimonial causes, and in cases of defamation, which brought a great amount of work to the Ecclesiastical Court, and I think in one or two other cases. Some years ago I used to hold a Court regularly every month, both at Gloucester and at Bristol, and occasionally the work was so great at Bristol that I had to hold fortnightly Courts there.

188. Was that business chiefly confined to what you have just stated, or was there a large amount of business of the same kind which you now provide for?
The principal amount of the business was in defamation cases and in testamentary causes.

189. Which now no longer belong to the Court?
They no longer belong to the Court; and not unfrequently matrimonial causes for separation from bed and board used to come before our Court.

190. Do you anticipate that, as things are now, the business of your Court will continue to require much attention on your part?

I think it will not. I think the business has diminished to such an extent, and that there are so few cases left for the Consistorial Courts, that there will be very little work indeed for them as Courts.

191. Have you any knowledge of the Courts of any other dioceses besides your own?

From returns I have. From a return laid before Parliament last year, I observe that there are very few causes heard in open Court in any of the dioceses in this kingdom.

192. The amount of business varies very much in the different Chancellors' Courts does it not?

It certainly does vary; but I am not aware that there is much business in any of the Diocesan Chancellors' Courts.

193. When you were alluding to the churchwardens, you stated that they were not churchwardens by law until they had been admitted at a visitation?

Under the Canons of 1603, I hold that they are not churchwardens until they have been admitted at visitation.

194. Do you know any instances in which legal proceedings have been taken in consequence of churchwardens acting before they had been admitted at visitations?

I do not. In our diocese, when any act of importance has to be done by a churchwarden, I have always advised that the churchwarden should be admitted previous to his performing such act, in order that no question might subsequently arise as to his being legally a churchwarden of the parish.

195. Do you know any instances in which churchwardens have attended a visitation, and not been admitted in consequence of a refusal to pay the fee?

Not within my personal knowledge. I have invariably held that the Ordinary has no right or power to refuse to admit a churchwarden whether he pays the fee or not.

196. Has that ever come in dispute before you?

Occasionally the registrar has expressed his desire that the churchwardens should not be admitted before they paid the fees.

197. I think you stated that it is your opinion that the churchwardens would be justified in paying the fee out of a voluntary church-rate?

I think so.

198. Do you think that, supposing a churchwarden refused to pay it out of a voluntary church-rate, he could be forced by law to pay it out of that fund?

I believe he could. I believe that the Judge of the County Court would hold that a churchwarden was liable to pay a fee which has been fixed under the provisions of an Act of Parliament and confirmed by an Order in Council, out of such voluntary church-rate.

199. Under what Act of Parliament is that?

Under the Act 30 & 31 Vict. c. 135, intituled, "An Act for the Establishment of a Table of Fees to be taken on Visitation," &c.

200. Earl *Stanhope*.] You said you were in favour of abolishing the fees paid by churchwardens; do you think that the clergy might be equally entitled not to pay fees on visitation?

I understood that these fees were to be abolished under the Bill now under consideration.

201. The clergy fees?

Yes.

202. *Chairman*.] Fees called procurations?

Yes, I understood that procurations and synodals are to be abolished under this Bill, which I think a very good arrangement.

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203. As regards the churchwardens, they are to pay 5 *s.* for a stamp on appointment, compulsorily?
Yes, that is so under the Bill. I consider it undesirable.

204. Earl *Stanhope.*] Supposing your proposal was carried out, that they should not pay the 5 *s.* stamp compulsorily, would it not diminish the fees so much that it would be difficult to find remuneration for the future officers.
I think not.

205. You said you approved of the two Schedules to the Bill?
I do.

206. Do you think it is possible, supposing the churchwardens were not to pay this 5 *s.* stamp, that the 33,000 *l.* required could be found?
I think so. I think the fees which are now taken amount to a very much larger sum than that.

207. *Chairman.*] There is a general impression that they do; but have you any data upon which that impression rests?
I only speak from what I heard in the debate in your Lordships' House the other evening.

208. Viscount *Halifax.*] What is a procuration fee?
A procuration fee is a fee payable by a clergyman on a visitation to the Ordinary who visits; it is due to the person visiting.

209. Earl *Nelson.*] If we are to have procurations explained, will you also tell us what a synodal is?
Formerly it was the custom when the Ordinary visited, for the clergy to entertain the bishop or archdeacon, and in lieu of that, fees, which are called Procurations, were instituted and have been payable now for some centuries. Synodals were payable to the bishop only.

210. Is it true that they are levied only on clergy with an income above a certain amount?
The procuration fees differ very much; I think they were regulated originally according to the value of the living in the King's Book; I know that the procuration fees in that part of the diocese of Gloucester and Bristol which lies in North Wiltshire are very much higher than those in the old diocese of Gloucester.

211. What I wanted to know was whether they are levied on clergy whose income is above a certain sum, so as not to touch the poorer clergy to be levied upon the comparatively wealthy clergy?
I believe they were levied upon all the clergy alike. In the cases of new livings, I believe the amount is regulated by the amount paid by neighbouring parishes.

212. Viscount *Halifax.*] Are not procurations paid by lay rectors, and not necessarily by the clergy?
The procurations do not come at all under my supervision; they are levied on the rectors, whether lay or ecclesiastical.

213. What I meant was this, that they are not necessarily a charge upon the clergy?
I believe they are not.

MR. FRANCIS HART DYKE is called in; and examined, as follows:

Mr. *Dyke.*

214. *Chairman.*] You are Registrar of the Province of Canterbury, I believe?
Yes.

215. Would you describe to the Committee what the duties of the Registrar are?
All the duties are set out in a Return; perhaps I had better read from it.

216. Will you read any part of it which you think important, or, perhaps, you could just state to us as shortly as possible the effect of it?
The

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The chief duties are to regulate the applications for marriage licenses, and by my letters patent all institutions and collations pass through the office; and, with regard to convocation, I have to prepare the documents under Her Majesty's writ, and to attend Convocation whenever your Grace chooses to summon me to attend.

217. So that your duties, besides those connected with marriage licenses, consist in recording all public acts of the Archbishop in the province?
Yes, all acts done by your Grace; but the chief duties are with regard to the marriage licenses; in point of fact, the whole of the emoluments which keep the office going arise from the marriage licenses. The fees apart from the marriage licenses do not amount to 250 *l.* a-year.

218. The duties connected with the issuing of marriage licenses are very onerous and very important?
Most important.

219. So much so, that you, of course, have a staff of clerks, and an office for the conducting of this business?
Yes; not only that, but I have three clerks and three registries, as it were, to keep up. I have one registry for the convenience of the public, where they come for their licenses, and I have two other offices where the Surrogates sit to administer the oaths when the parties come; we pay for that.

220. All the expenses of keeping the registries at present are defrayed by yourself out of the fees arising from this business?
By myself and the Vicar General; he contributes a portion. The Surrogate does his duty, and he pays the Surrogate for attending there to administer the oaths.

221. What is your exact connection with the Vicar General; we have heard from Mr. Monk the connection between the Registrar and the Consistorial Judge—namely, that the Registrar registers the Acts of the Consistorial Court, but the Vicar General is not a Judge.
Yes, he is in one sense, with regard to the confirmation of bishops. Of course your Grace recollects perfectly well Dr. Hampden's case. In cases of that sort where objections have been taken to the election or confirmation of a bishop, the Vicar General sits to hear and dispose of the matter, and he is your Grace's adviser in all matters of law which occur in the Province; he sits as assessor with you in all appeals which are sent to your Grace.

222. Mr. Monk has explained to us the distinction between the duties of the Chancellor *quâ* Judge and his duties *quâ* adviser of the bishop; the Judge of the Archbishop is the judge of the Arches, is he not, usually?
In one sense he is, but, in point of fact, you have three Judges, as it were; there is the Judge of the Arches, there is the Vicar General, and there is the Commissary of Canterbury; they all have separate and distinct functions.

223. The Commissary of Canterbury has to do with the diocese; we will not touch that just now; but as regards the Province, it is important that we should understand the exact duties of the Vicar General as distinguished from those of the Judge of the Arches.
The Vicar General has to advise your Grace upon all matters connected with the Province; when there is a vacancy in any see, all spiritual jurisdiction is vested in your Grace, and your Vicar General issues a mandate appointing the officers of the see during the vacancy.

224. Am I right in saying this, that the Vicar General, when he sits as a Judge, sits as the representative of the Archbishop personally, and that the Archbishop might perform those duties in person, but that he could not sit in the Court of Arches in person?
I should think you might say that. Your Grace will remember a case which occurred many years ago before Lord Stowell. It was held that the Chancellor of London had not the power to deprive the clergyman, and the Bishop went in and sat with Lord Stowell, and did it himself.

225. That was the case of Stone?
Yes, it is a reported case.

 226. That

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226. That was simply confined to deprivation, was it not?
Yes.

227. Still, as you say, the Bishop was there, and took his seat as Judge?
Yes.

228. I want to know, if we can learn it, what is the exact distinction between the judicial functions performed by the Dean of the Arches and such judicial functions as fall to the Vicar General?
That is easily understood, because the Dean of the Arches sits to hear appeals from all the dioceses within your Grace's Province; and in former times he used to have the original jurisdiction in all church-rate questions, and matters of that sort. The jurisdiction of the Vicar General is quite distinct altogether. Perhaps I had better refer to the letters patent, to see what the duties are.

229. As a matter of fact, he does sit in a judicial capacity at the confirmation of bishops?
Yes, he does.

230. And he does advise the Archbishop, as his assessor, in many of those appeals which are made personally to the Archbishop?
Yes.

231. And he is the general legal adviser to the Archbishop?
He is.

232. The Judge of the Arches holds the great Court of Appeal of the Province?
Yes, and the Vicar General institutes all the clergy.

233. By some old usage, the Vicar General also institutes all the clergy in the diocese of Canterbury?
He does.

234. Then it is your duty, as Registrar of the Province, to record all the acts of the Vicar General?
Yes.

235. But not those of the Dean of the Arches?
No, I have nothing to do with those.

236. There is a separate Registrar for the Court of Arches.
Yes.

237. Besides the Registry of the Arches, and the Registry of the Province, there is, of course, a Registry of the diocese of Canterbury?
Yes.

238. And besides the Dean of the Arches and the Vicar General, there is a Commissary of the diocese of Canterbury, who would answer to the Chancellor in an ordinary diocese?
Yes.

239. Do you see any objection to the union of the office of Vicar General with that of Chancellor or Commissary of the diocese of Canterbury?
No.

240. As a matter of fact, they have often been united, have they not?
Yes.

241. The late Vicar General was, I think, also the Commissary of the Diocese?
Yes; the two offices might easily be held together.

242. Does it appear to you to be desirable that the registries should be kept separate, or would it be possible to unite the Registry of the Diocese with the Registry of the Province?
It is much more convenient as it is now for the public, because if the change your Grace suggests were made, all the people about Canterbury would have to come to London to get their business done, whereas the registry being on the spot, they can do their business there.

243. In

243. In fact, it appears to you to be more for the convenience of the public that there should be a registry for the diocese of Canterbury separate from that of the province?

Yes, and not only that, there are two archdeacons in the diocese of Canterbury; one the Archdeacon of Maidstone, and the other the Archdeacon of Canterbury. All their business is done at Canterbury, and it is much more convenient for people to go there than it would be to have to come to London about it; and, moreover, several Acts of Parliament require documents to be registered in the registry of the diocese, which registry ought to be locally within the diocese.

244. You say that the principal part of the duty of the registrar is connected with marriage licenses?

Yes.

245. Can you give us any idea of the number of persons applying for marriage licenses, in a week, for example, so that we may form some notion of the amount of business?

I can tell you the number of licenses granted, but I cannot tell you the number of people who come, because a great many people come for information in order to know how they can get married in a particular parish, and so on. Matters of that sort are of daily occurrence; people coming to the office, and making inquiries, are very numerous.

246. I see it is stated here that the number of licenses granted in Canterbury in the three years, 1871, 1872, and 1873, was 9,821; you could not tell us what proportion of these would come to your office, and what proportion would be issued by the surrogates?

No, but I can tell you what number of licenses I issue myself.

247. We should like to know that?

I can give you the number from 1865 to 1875; that is in 10 years.

248. *Lord Steward.*] Eleven years?

Yes; during that time I granted 28,152 licenses.

249. *Chairman.*] In 11 years?

Yes; of course there are a great number of applications which we are obliged to reject, and there are a great number of people who come and find that they cannot get a license, and then they go elsewhere.

250. In fact, the duty of the registrar connected with marriage licenses is a real and substantial work, requiring great attention, and involving considerable responsibility?

Yes, most certainly; in point of fact, in order to do away with clandestine marriages, it is necessary to exercise great caution to prevent people coming and getting a license when they are not entitled to it. We have a caveat book, in which an entry can be made to stop a license. We always search the caveat book before we grant a license, in order to see that there is no objection to it.

251. You are aware that in this Bill it is proposed to unite the office of Registrar of the Province with the office of Registrar of the diocese of Canterbury?

Yes.

252. Do you see any objection to that?

The proposal is not only to unite those two offices, but it is also proposed by the Schedule to put four or five other offices together with those. I am of opinion that that cannot be done; I am of opinion that no single man, and indeed that no two men could perform the duties.

253. You allude to the office of Secretary to the Archbishop, as it is called?

Yes; for one, and Registrar of the Arches for another. In the first place, the office of Secretary to the Archbishop is a most important office, and one which requires a great deal of labour. I believe while your Grace is in town it is your secretary's duty to attend you on two or three days in the week at Lambeth, or at Addington or elsewhere, wherever your Grace may be; and during this time Convocation may be sitting, and when Lord Penzance is sitting

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the Registrar of the Arches has to attend him for days and days together; I, or the future holder of the office may be in London, and may be required to be at Canterbury, or attending Convocation at the same time. No man in the world can do it all.

254. It is also proposed in this Bill to unite the office of Registrar of the Archdeaconries in the same office?
Yes.

255. You are of opinion that it is impossible, or at all events that it would be very difficult for any one man to perform the duties of all these offices?
Certainly, he could not do it.

256. Of course you do not confine yourattention only to the registry, you have other important duties besides; you are Queen's Proctor?
Yes; but I put all that aside, I say nobody could do it. Even if I had not that other work to do I could not do it.

257. You think that the offices of Registrar of the Province, and Registrar of the Diocese, and Registrar of the Arches, and Registrar of the Faculties, and Registrar of the two Archdeaconries could not be satisfactorily united together?
I am quite sure they could not.

258. Because the same person would be required to be in several places at the same moment?
Yes.

259. Supposing you are attending to your duties as Queen's Proctor, does not the same difficulty occur?
Quite the same; but I put that all on one side. This would more properly apply to my successor, not to myself.

260. Of course you understand that this Bill has no reference whatsoever to the existing holders of any offices to which fees are attached?
Just so.

261. That is the difficulty which presses upon the mind of the Committee. I should think that all these offices, though they are very laborious and very important, are at present held by persons who have a great many other duties to perform, and they do not see, at least I do not, any great difficulty in a man holding these several registries than in his uniting one of those registries with half a dozen other offices which have no connection with the diocese or the province. Can you remove that difficulty which occurs to my mind?
The Registrar who would succeed me would have ample work to do with regard to all these licenses. He ought to be on the spot in order to attend to that business. People come from all parts of the world to get licenses in London, and there are questions as to Foreign law and English law. It is our duty to prevent clandestine marriages, and to see that people do not get licenses who are not entitled to them. That necessarily involves great responsibility and a considerable amount of work.

262. In fact your opinion is that the work would be better done if all these registries were not united in one person?
Yes, certainly.

263. Still you would not have a man give his whole attention to any one of them as the business of his life?
No.

264. That would be absurd, would it not?
He might hold a couple of them.

265. He has rather to preside than to act, has he not?
One is obliged to answer all the law questions which arise; one has the advantage of having the Vicar General when any question arises with respect to foreign law, if I have any difficulty myself I consult with him as to what is best to be done, in the case of an application for marriage license, I mean.

266. The proposal is to unite the office of the Archbishop's secretary with these various registries?
Yes.

267. And you consider that that would be very difficult?
I should think it would be very undesirable; the registrar and the secretary are quite distinct and separate altogether; the secretary is merely a personal officer of the Archbishop, he is not a legal officer.

268. Then of course you would draw a distinction between the case of Canterbury and the other dioceses throughout the kingdom. You are aware that in a great many instances the offices of registrar and secretary are held by the same person at present?
Yes.

269. Do you remember any instance in which they were ever held by the same person in Canterbury?
No; the fact is, as your Grace is aware, I am the first person in this position. I acted as deputy to Mr. John Moore for 10 years, and after that the Archbishop Howley was pleased to appoint me, because I discharged the duties to his satisfaction; in fact instead of his appointing one of his own family, I was the first officer who was appointed.

270. In what year were you appointed?
I was appointed first in November 1834, as deputy registrar to Mr. John Moore, and on the 31st December 1844, that is just 10 years afterwards, when Mr. Moore died, the Archbishop appointed me registrar, and I have acted as such ever since.

271. In fact you performed pretty nearly the same duties when you were deputy as you have afterwards performed as principal?
No, that is not so, because the alteration with regard to the marriage licenses had not taken place then. All that duty was discharged by the proctors. Then when the change was made, we did the whole duty which the proctors formerly did, so that it becomes quite a different affair altogether.

272. You heard the discussion as to the undesirableness of a registrar being removable?
Yes.

273. During 10 years you held the office of deputy registrar?
Yes.

274. And therefore you were removable during that time?
Yes.

275. But during the last 20 years or more, you have held the office of registrar under letters patent?
Yes, under letters patent.

276. There was no more difficulty in the discharge of the duties during the first 10 years than there has been during the latter 20?
Not the least.

277. Where are all these documents kept; are they kept at what is called the Vicar General's Office?
No, we have a room at Lambeth, so that when our space gets filled up at the Vicar General's office, they go to Lambeth, and are put away there. We are obliged to keep the documents accessible, because persons come to search for information, and so forth.

278. The Vicar General's office is a private building, is it not?
Yes.

279. Belonging to yourself?
No; it is one that I rent.

280. It is in Doctors' Commons?
Yes.

281. It is alleged that, among other difficulties which would arise from the union of these various offices, one would be that the secretary must be at one end of London, and the registrar must be at the other?
Yes.

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282. Is there anything in the nature of things which makes it necessary that licenses should be obtained at Doctors' Commons, any more than anywhere else?

No, it is only a matter of convenience for people to come there; they all come there.

283. That is to say, they are in the habit of coming?

Yes; and they grant licenses at Canterbury just as we do at Doctors' Commons, to people living on the spot.

284. There can be no reason why people should go to Doctors' Commons, any more than to any other place; it is a mere name now; the old establishment has ceased to exist?

Yes, it is all sold.

285. In fact, it is merely the name of a street in London now?

Yes, you might go anywhere, provided it was to a convenient spot.

286. There would be no great difficulty in people coming to Dean's Yard for their licenses, anymore than in their going to Doctors' Commons?

No.

287. Originally there was a court held at Doctors' Commons; there was a hall and a corporation, but all that is gone?

Yes, certainly.

288. It has been often stated that a large sum of money was to fall in in a certain year to be distributed by the Archbishop of Canterbury and the Bishop of London, for such purposes as they thought best for carrying on these courts; you know what I allude to, the compensation to the proctors. Perhaps you would explain what really was the case as to that, because so many misconceptions have arisen on the subject, that we should be very glad to have the real state of the case before us?

I have the whole story here (*producing a Paper*); if your Grace will allow me I will read it to you.

289. How long is it?

It is not very long.

290. Will you hand it in?—(*The same is delivered in*).

291. As a matter of fact, was this the case, that the then Vicar General and yourself, and the then Master of the Faculties and Dean of the Arches thought it desirable that there should be a change in the arrangements about proctors?

Yes.

292. That it was at first thought that the Archbishop (Archbishop Sumner) with the Bishop of London, who was myself, had the power of altering these matters by their own authority, but it was found that they had not?

Yes.

293. That they could only act with the concurrence of the various officers whom I have named?

Yes.

294. And that the Archbishop, and the Bishop of London, and those various officers agreed to an arrangement, wherby for 10 years a certain sum should be paid to the proctors to indemnify them for a loss arising from the change; is that correct?

No. Perhaps your Grace will allow me to put it in a rather different way. In consequence of representations being made to the Archbishop of Canterbury and the Bishop of London, as to certain irregularities which had taken place with regard to the procuring of marriage licenses, the Archbishop referred the question to his officers to know how it could be stopped. These officers were Dr. Lushington and Sir Travers Twiss, and they, in connection with the Archbishop's and bishop's officers, drew out a scheme for doing away with the privilege which the proctors had of obtaining these marriage licenses, and I was consulted with the others. It occurred to us that the power which the proctors had of doing this particular

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particular class of business should be done away with, and that the parties should be required to attend in the registry and obtain the license themselves upon information, which they themselves gave. It appeared to me to be very desirable, that in making this change the cost of the license to the public should be reduced, and I believe I suggested that as the civil registrars were allowed to charge so much for their licenses, it would be very desirable that the licenses that we issued should be put at the same sum. I have here the Act of Parliament from which it appears that the Legislature sanctioned a charge by those registrars under the Registrar General whom your Grace alluded to just now, of 30 *s.* for their licenses, besides the stamps which were necessary by law, and then it was that the first order was made. The Archbishop ordered that the parties themselves should attend, and give instructions for their own licenses, and that they should be charged 30 *s.*, and 12 *s.* 6 *d.* for stamps, and that was done. We fixed it upon this principle; we thought that nobody could find fault with us for reducing the cost to the public, and we were quite safe in so doing. That was accordingly done. When the first order was issued, the proctors did not like it, and they memorialised the Archbishop and the Bishop of London with regard to it.

295. Do you think that the Archbishop and the Bishop of London had the power to do it themselves, or were they bound to take advice from their officers and act accordingly?

I think they could not have done it themselves.

296. You do not think they had any such power?

No. We were finally all agreed, the proctors, the Archbishop, the Bishop of London, and the officers, and the scheme was carried out.

297. The proctors were to receive a sum for a certain number of years?

Yes.

298. And when that number of years came to an end, the whole arrangement came to an end, and all the fees were appropriated?

No; the fees were appropriated before by the first order. Now, if you will allow me, I will read your Grace's letters, and my answers to them, and then you will see how all the matter has been worked out. I may say that I feel most anxious that this should be clearly laid before the Committee, because there has been much misconception and much misrepresentation on the subject, in consequence of the matter not being fully understood. For that purpose I have had all these papers prepared, in order that the public may know that we have acted fairly and honestly in the matter. After the expiration of the 10 years, of course there was an end of the matter, but during the whole of the 10 years, I and one other gentleman paid the money regularly to all these proctors. It was most faithfully carried out, and nobody had a word to say against it. On the 11th May 1872, your Grace was pleased to write to me to this effect: "I understand that the arrangement for proctors' compensation comes to an end this year in the month of June. When this occurs, I hope you will have the goodness to bring before me the whole question of the fees;" and your Grace added, in a postscript, "Lord Shaftesbury has written to me on the subject with regard to what passed in discussion of his Bill." My answer to your Grace was this: "I duly received your Grace's letter of the 11th instant, and herewith send three Orders, made by the late Archbishop, by which you will observe that the whole question of the fees was settled at the time these Orders were made. The proctors' compensation ceases the beginning of next month, but it may be thought an act of liberality to pay them up to the end of the month, so as to complete the half year; after which the same is to be divided between the Vicar General and registrars, per Order No. 2. I wish, however, to state, for your Grace's information, that in consequence of the arrangement made in 1862, I was obliged to take a larger set of rooms for the convenience of the public resorting to the office, for which I had to pay 100*l.* per annum instead of 50*l.* I had also to take an additional clerk. I also gave up my share of the compensation fund, which in the 10 years amounted to between 300*l.* and 400*l.*; and, further, we have had to increase the fees of the surrogates, so that up to the present time I have derived little or no pecuniary advantage from the change, except the extra labour and responsibility cast on me, looking to be recouped when the compensation ceased, should I live to see it, which is now about to be accomplished." On the 25th May your Grace writes again:

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again: "Stonehouse, Broadstairs. My dear Mr. Dyke,—I have received your letter of the 23rd inst. on the subject of the proctors' compensation; the Bishop of London and myself have considered this matter, and we think it desirable that the sum hitherto paid out of the proceeds of marriage licenses in compensation to the proctors shall be reserved for future disposal when proper arrangements shall have been made for the payment of the Judge of the Provincial Court. With this view, it will be necessary to issue a supplemental Order to take the place of No. 3 of those Orders which you have forwarded to me, and I shall give directions to have it drawn up." My answer to your Grace is this: "I have the honour to acknowledge the receipt of your Grace's letter, and I beg to state that Dr. Lushington and Sir Travers Twiss were of opinion that the Archbishop of Canterbury and Bishop of London had no power to create a compensation fund for the proctors out of the fees payable to the officers on marriage licenses, and if their law was correct in 1862 I apprehend that your Grace has no power to do what you suggest. By Order No. 3 your Grace will perceive that it was a voluntary act on the part of the officers to give up a portion of their fees to the proctors for a limited period, and as it is a matter of considerable importance to the officers concerned, it will be their duty to take legal advice if any such order is made." Then, in 1874, your Grace writes again on the 15th July: "My dear Mr. Dyke,—You will remember that in 1872 we had some correspondence with reference to the proctors' compensation, the payment of which terminated in that year. I should be obliged if you would let me have a clear statement of the arrangement by which the compensation was originally made, and also give me an account of the manner by which, on the cessation of the payment, the *extra* fees were made payable, as you stated, to yourself and the other officers. Information on this point may be needed, as the question of the disposal of the fees paid by way of compensation may possibly come under the consideration of Parliament. Indeed, Mr. Cross's speech to-day shows that it is inevitable." I replied to your Grace on the 29th July 1874 as follows: "I have the honour to acknowledge the receipt of your Grace's letter of the 15th inst., requesting that I would send you a clear statement of the arrangement by which the compensation to the proctors was originally made, and also give you an account of the manner by which, on the cessation of the payment, the *extra* fees were made payable to myself and other officers." In compliance with your Grace's request, I beg to send you copies of three Orders, made in 1862 by Archbishop Sumner, together with the correspondence which took place in connection therewith, and I may add that similar Orders were made by your Grace, as Bishop of London. The reasons for making the change in obtaining marriage licenses are so fully set out, that it is unnecessary to repeat them at any length. By the Order, No. 1, the change was made in granting licenses, and the fees of the licenses were fixed at 30 *s.*, over and above the stamps required by law, which is the same sum as the civil registrars for themselves are authorised to charge for their licenses, by the 19 and 20 Vict. c. 119, sec. 10. The Order, No. 2, directs that out of the 30 *s.*, the vicar general and his successors are to receive 12 *s.*, and the registrar and his successors are to receive 18 *s.* on each license. By the Order, No. 3, the archbishop approved of a scheme proposed by the master of the faculties and the vicar general, whereby out of the fees allotted as above, the vicar general reserved the sum of 5 *s.*, and the registrar the sum of 5 *s.*, so as to form a fund for compensation to proctors for a period of 10 years. Your Grace will thus perceive, that by the cessation of the payment of compensation to the proctors, no extra fees were made payable to myself and the other officers; the compensation referred to, being a voluntary gift on the part of the officers out of their fees. The scheme above referred to has been most scrupulously carried out at a great sacrifice to the officers. No extra fees were charged to the public in respect of the compensation, the fact being that the public gained 10 *s.*, the charge heretofore being 2 *l.* 12 *s.* 6 *d.*, and by the change the fees were reduced to 2 *l.* 2 *s.* 6 *d.* for each license, including stamps, which sum is the same as that received by the civil registrars under the Act of Parliament."

299. Was not the upshot of it, that you satisfied myself and others that I had no power to dispose of these fees, and that therefore it must await the decision of Parliament, supposing that anything was to be done at all?

Yes.

300. But

300. But that really the Order had allocated these fees otherwise than was proposed to be done in one of the Bills brought before Parliament?

Yes; I should like to say a word or two on this subject. We could never understand why we should be troubled with all these reports and returns that were made, because I wish to state that the cost of a marriage license is not an ecclesiastical fee; it has nothing to do with that matter. The object of this Bill, as it has been stated in Parliament and out of Parliament, is to relieve the clergy from fees paid by them. But what has a license to do with the clergy? It is paid by the laity, and you might just as well have contended, in old times, that the fee on the probate of a will, which the proctors had the power of extracting, and on the letters of administration, were ecclesiastical fees, as contend that the fees upon licenses are. It seems to be an entire misnomer; the whole matter appears to have been misunderstood.

301. You do not think that the clergy would be any more relieved by the taking off of marriage license fees than anybody else?

No, they have nothing to do with it. In one sense, they benefit by it, because they are appointed surrogates, and receive fees.

302. As to the mode in which these fees are collected, the marriage licenses are always stamped, are they not?

Yes, and the affidavit is stamped.

303. And the parties pay a fee besides that?

Yes, 30 *s.*

304. Does that include the stamp?

No, beyond the stamp.

305. Do you purchase the stamps?

Yes; I have here the Act of Parliament, the Civil Marriages Act, which regulates these things generally.

306. Does it appear to you that there would be any difficulty in stamping a marriage license to the amount of the whole fee?

I think there would be a great difficulty in that.

307. Why?

Because who is to carry on the business of the office? I find the money to carry on the business now. If your Grace's plan, as proposed in the Bill, were to be carried out, we should not have a shilling to get on with; how are we then to carry on the business?

308. You mean that the money at present comes in from day to day, but if a system of stamps were adopted it would not come in until the end of the half-year?

We should get nothing. What I want to understand is, why are we to be interferred with, with regard to our licenses, while the civil registrars are to be left alone.

309. My present question is, what is the difference between collecting the fee by stamps and its being paid from hand to hand?

I think it would make the greatest difference to us. Why should we not be allowed to have our fees and our emoluments just the same as other people?

310. Is there any proposal in this Bill to remove the fees?

There is a proposal to collect them by stamps, and to that I have the greatest possible objection.

311. Would you state what the objection is?

I find the money to carry on the business of the office. Why should I be debarred from having the money paid at the time as a ready money transaction?

312. You think that it would be an inconvenience to you to have the payment delayed until the end of the half-year, instead of receiving ready money?

Yes. How am I to pay the surrogates daily, and the clerks, rent and taxes, and so on?

313. That is the sole objection to payment by stamps, that it would delay the payment coming into your hands for half a year?

Yes.

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314. Bishop of *Ely.*] Your objection is that you would have to pay out ready money, and that you would only receive it upon some distant credit?
Yes; and in this Bill there is no provision made for clerks' salaries, or any expenses at all.

315. *Chairman.*] We are now speaking of the proposed substitution of stamps for money fees; does it occur to you that there is any other objection to substituting stamps instead of fees paid in money, except the delay in the payment?
I do not know how the stamps would be obtained. Under this Bill it is proposed, I think, that the Ecclesiastical Commissioners should provide the stamps.

316. It is proposed that they should issue the stamps; could not you get them from them?
I should have a great objection to anything of the sort. We have carried on the business very well for a great number of years, and I do not see why we should be interfered with.

317. You think it an unnecessary change?
Yes, I think so, and a prejudicial change.

318. But only prejudicial as delaying the date of payment?
We all know that business cannot be carried on unless you have ready money; and if the change is made, instead of paying 12 *s.* 6 *d.*, I should have to advance 2 *l.* 2 *s.* 6*d.*

319. That is the real difficulty that presses upon you. At present the money is paid to you from day to day, and you think that if stamps were introduced it would not be paid until the end of the half-year.
Yes, that is a great objection.

320. Is there any other observation upon this Bill that occurs to you?
Yes; I should like to say this: this Bill is proposed to be carried out by rules and orders, and as it stands, your Grace and the Archbishop of York, and the Lord Chancellor, and, I believe, Lord Penzance, and the Lord Chief Justice of England may make any rules or orders they please, so that the Bill may be carried out in quite a different way from what appears upon the face of it. We should be entirely at the mercy of any rules or orders that might be made. Now I, for one, should think that that ought not to be allowed. Whatever the Bill is to be, let it appear upon the face of it, and then we shall know where we are and what we are subject to; but to have all that left in a state of uncertainty I strongly object to.

321. At present all the fees except the marriage license fees may be altered, may they not, by the Lord Chancellor, the Archbishop of Canterbury, and the Archbishop of York?
Yes; all ecclesiastical fees concerning the clergy only.

322. I suppose that you consider that the marriage license fees are fixed?
Yes.

323. By what?
They have been so ever since I have known anything about it; that is for 40 or 50 years.

324. Are they fixed by Statute?
As I said just now, we fixed the marriage licence fees according to the provisions of the Act of Parliament with regard to the civil registrars.

325. In fact, they are fixed by yourself?
No; they were fixed by the Archbishop and the Vicar General and Doctor Lushington, with the consent of all the other officers.

326. They were fixed by the Archbishop and his officers, and the Bishop of London and his officers?
Yes.

327. It is now proposed that they should be fixed by the two Archbishops, the Lord Chancellor, and the Lord Chief Justice of England?
Yes.

328. That

328. That is not a very great change, is it?
No; I do not know that it applies so much to the marriage license fees as it does to fees on institutions and collations?

329. At present, those fees are all fixed by the two Archbishops, and the Lord Chancellor alone, without the Lord Chief Justice; therefore, there is no change there, except introducing the Lord Chie Justice.
Yes.

330. I think your alarm about these rules and orders is a little visionary, is it not?
As the Bill was originally sent out, the first claim upon the fund was the salary of the judge, and the people who actually earned the money were put third.

331. That is not as the Bill stands now?
No.

332. You do not consider, then, that the chancellors of the dioceses earn any of the money?
I do not know about that; I can only speak for the Vicar General.

333. You seem to consider that the registrars are the only people who earn any of the money which is collected?
We earn a great part of it.

334. Do not the secretaries to the bishops earn something?
Yes; I only speak of our office. We have nothing to do for the clergy, except as regards the institutions and collations, besides the marriage license business.

335. It has been maintained that the Judge performs a large portion of the judicial functions, which would naturally fall upon the chancellors, and therefore it is only reasonable that the Judge should receive a considerable share of the fees which are collected, in order to carry on the judicial business of the whole system; what is your opinion upon that?
But then that does not apply to the Vicar General's office.

336. Besides the objection which you stated with regard to the stamps, and the objection to the rules and orders, is there any other objection which you feel?
There is also an objection with regard to the offices being heaped upon my successor.

337. That you have already stated?
Yes.

338. Is there any other?
No, I do not suppose that there is.

339. *Lord Steward.*] By what tenure do you hold your office?
By letters patent.

340. During good behaviour, or during pleasure?
For life. I have a copy of the letters patent here.

341. I asked whether you held it during pleasure, or during good behaviour?
Neither one nor the other; I hold it for life.

342. *Chairman.*] It is a patent office; a freehold?
Yes.

343. *Lord Steward.*] You are aware that by this Bill it is proposed that the tenure of the Registrar of the Province of Canterbury shall be during the pleasure of the Archbishop?
Yes.

344. Do you think that a desirable arrangement or not?
No, I think the registrars ought to hold their offices for their lives.

345. Will you state why you hold that opinion?
It is because otherwise they might be turned out at any moment.

346. You think it would not be worth a person's while to acquire the necessary experience, and to make the necessary arrangements for the office, unless he had

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had some security for fixity of his tenure of it, so long as he conducted himself with propriety?
I think so.

347. I also gather from what you stated with respect to your objections to the rules and orders, that those objections would be removed if the rules and orders were embodied in a schedule to the Bill?
I think it ought to appear upon the face of the Bill how it is proposed to be carried out.

348. You think that the rules and orders ought to be stated either in a clause of the Bill, or in a schedule to the Bill, so that Parliament may know exactly what is the system it is establishing?
Yes.

349. As to your duties as Queen's Proctor, I apprehend that your functions with regard to marriage licenses have made you very familiar with the law of marriage?
Yes.

350. And your duties as Queen's Proctor very largely relate to the law of marriage?
Yes.

351. Therefore, it is probably for the convenience of the public that you should discharge the duties of Queen's Proctor; you can discharge them quite as well as anybody else?
Yes; when I was appointed Queen's Proctor the business was very small. It merely related to the estates of illegitimate persons; persons leasing *bona vacantia* to which the Crown was entitled. Afterwards came the Crimean War, and I managed the whole of the business in these matters arising out of that war, for the Government; and afterwards Lord Westbury asked me to undertake the business in the Divine Court in consequence of my being familiar with all marriage questions, and having had a great deal to do with such matters already. The result was that I was put into the Act of Parliament which was passed for that purpose.

352. Then we may take it that your duties as Queen's Proctor were not alien from your duties as Registrar of the Province of Canterbury?
No, I am always upon the spot, my two offices are within 100 yards of each other.

353. I think I understood you to say that you did not consider the cost of a marriage license an ecclesiastical fee, and you did not see why the receipts from the fees on marriage licenses should be applied to the maintenance of ecclesiastical courts?
Certainly I do not.

354. Has your attention been turned to the Report of the Royal Commission on the Law of Marriage, which was made some years ago?
Yes.

355. Do you remember any recommendation which they made upon the subject of the fees on marriage licenses?
I believe they hinted at the abolition of licenses altogether.

356. If the licenses had been done away with the fees of course would have been done away with?
Yes, and then the Vicar General's office would have entirely ceased.

357. *Chairman.*] Did I understand you to say that it was recommended by the Marriage Law Commission that marriage licenses should be abolished?
That was hinted at.

358. What do you mean by hinted at?
I always understood that it was brought about by the late Bishop of Winchester.

359. The first question is, whether it was brought about at all?
I rather think it is a recommendation in their report.

360. *Lord Steward.*] At all events, if there is a surplus arising from the fees upon marriage licenses, you conceive that the proper mode of dealing with these

these fees would be to reduce them to the general public rather than apply them to the maintenance of an institution with which they have nothing to do?

Yes. I think the public ought to have the benefit of them, not a Judge who has nothing to do with them.

361. Do you think that in the dioceses generally the chancellor has anything to do with the issuing of marriage licenses?

Yes; I believe the chancellor and the registrar share the fees between them.

362. That was in respect of the jurisdiction which the Ecclesiastical Courts anciently exercised with regard to the law of marriage; but since the alteration in the law of marriage, which took place in 1857, you contend that the connection between the Ecclesiastical Courts and the marriage license fees has entirely ceased?

Yes.

363. I think I also heard you say, that nobody would find fault with any reduction of the fees on marriage licenses?

I was referring to the reduction we made; it would be considered very obviously objectionable for us to reduce the fees below that which Parliament permitted the other registrars to charge for their licenses; it would have been called under-selling the civil registrars, and they would not at all have approved of it.

364. Have you heard any complaints with regard to the existing table of fees, as to whether it is considered too high, or not?

No; on the contrary, since this alteration was made, many testimonies have been given to us that the public entirely approved of the alteration, and considered that the fees were very moderate. Only last week, three or four people mentioned that the fees were very moderate, and said that it was undesirable that a change should take place.

365. Bishop of *Ely*.] Have you any objection to the tenure of the registrar's office being during pleasure, over and above what you have stated, namely, that it would be difficult to get a good man to take it if it was to be held during pleasure?

That is a matter I have never thought much about; I have got letters patent myself, and the general question has never been brought before me.

366. Your principal objection was the difficulty of getting a person to take the office upon a less tenure?

It is almost inevitable from the circumstance of the College of Advocates being done away with, that both solicitors and barristers should come in, and that all these offices should be filled up either by barristers of so many years' standing, or by solicitors of so many years' standing. I have no doubt that under these circumstances you will get plenty of people who will come and take the office, but they will not discharge the duties equally well; they will not know so much about the business, if the proposed change is made.

367. The office of bishop's secretary has always been held during pleasure, has it not?

Yes; but the bishop's secretary is not a legal officer.

368. There is no difficulty in filling the office with men of high standing, although it is an office that is held during pleasure?

That is so.

369. Would there be more difficulty in filling the office of registrar upon a a tenure during pleasure, than there has been in filling the office of secretary upon that tenure?

No, you might get 50 people.

370. I mean there would not be any difficulty in filling the office with good men?

I cannot exactly say that.

371. *Chairman*.] I think you said that you discharged the duties of the office for 10 years in that way?

Yes, as deputy.

372. That must have been during pleasure?

 Yes;

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Yes; Mr. Moore appointed me; but he was a sinecurist, and did not interfere at all.

373. Lord *Hatherley.*] You express an objection to the power of making rules, and orders being vested in certain high functionaries, as it is proposed under the Act, and said that you would prefer to see them contained in a schedule to the Act, would you carry that so far as to say that all alterations of rule should be made by Act of Parliament?

All substantial rules, or alterations of rules, dealing with salaries, and fees and duties.

374. I understood your objection to be general to that clause with regard to the power of making rules; you stated, in answer to a noble Lord, that you would rather see them all set forth on the face of the Act?

Yes; the objection is this, we should like to know where we are.

375. On the other hand, do you see any objection, or difficulty in the way of stereotyping the rules, so that nothing but an Act of Parliament can alter them?

There is always a great objection to not knowing where you stand. The Archbishops and the Lord Chancellor might reduce all the fees on collations, and so on. If it is left in that way you really do not know where you are.

376. *Chairman.*] Is not that the case now?

No, all these fees are regulated by Order in Council; there they are specified and signed by your Grace.

377. Lord *Hatherley.*] They can be varied by the same power, can they not?

Yes.

378. Therefore there is now the same objection in that respect as that which you have stated to the present Bill?

Yes, I mean where there are salaries or fees.

379. You are aware that under the clause in this Bill it is provided that such rules shall be laid upon the Table of both Houses, in the usual manner?

Yes, but I do not consider that that meets the objection.

The Witness is directed to withdraw.

The Venerable Archdeacon ALFRED POTT, is called in; and Examined, as follows:

Ven. Archdeacon *A. Pott.*

380. *Chairman.*] You have been Archdeacon of Berkshire for some time, I believe?

Yes, between six and seven years.

381. And you have attended some meetings of archdeacons that have lately been held?

Yes; your Grace was kind enough to ask for our opinion about the Bill, and all the archdeacons of the province were summoned to a meeting; I think 30 or thereabouts attended, and we have had several meetings on the subject.

382. I have reason to suppose that you are tolerably well in possession of the opinions of the archdeacons who were present at these meetings?

I believe I am.

383. The Archdeacon of Middlesex, who is new to his office, informs me that you are more likely than any one else to give the opinions of the archdeacons?

Yes, it was at his request that I came here to-day.

384. Upon looking at this Bill, considerable objections were at first raised by the archdeacons, from a fear that it would interfere with their visitations?

Yes.

385. Have you considered that question carefully?

We considered it in the first instance with regard to a Draught Bill, which was in some respects different from that now before your Lordships. There was a great desire on the part of the archdeacons, that nothing should be done

to

to interfere with their visitation courts, and particularly that nothing should be done in any way to discourage the churchwardens from being present at those courts. That of course bears upon the question of fees as well as other matters. There was a very strong feeling upon that subject, and there still is a certain feeling of doubt, as to how the Bill as it stands at present, will influence the archdeacon's position and the archdeacon's jurisdiction and power.

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386. Will you mention any of the provisions not in the Draught Bill, but in the present Bill which you think might interfere with the archdeacon's visitation, and with his influence over the churchwardens generally?

There are certain provisions in the Bill which do directly interfere. There is a provision for example, that the archdeacon shall not for the future appoint any surrogates, which he has the power of doing at present. Then again, some archdeacons are in the habit of issuing faculties from their courts; that power is taken away by the Bill. But I believe that is not a power which is generally exercised; in fact, I think it is peculiar to certain archdeaconries. I do not speak my own judgment upon this matter, as to whether it is desirable or not to abolish these powers; but the archdeacons who have these powers, as a whole, are not desirous of having them taken away; they do not like to have the power of appointing surrogates removed.

387. Do the archdeacons as a matter of fact, appoint surrogates?

Yes.

388. Can you mention any?

Yes, I do myself; all the three archdeacons in my diocese appoint surrogates. I do not think that it is of any importance, because the bishop's surrogate can discharge his functions throughout the whole diocese, whereas an archdeacon's surrogate can only do so in his own archdeaconry; and it is much more convenient to be the bishop's than the archdeacon's surrogate. I do not attach any value to that at all. As to the faculties, they are only issued by a few archdeacon's courts; they are issued by my own. I believe it is a remnant of the old diocese of Salisbury, in which Berkshire used to be. I do not attach much value to that, but I believe the archdeacon's courts issue faculties at much less charge than the bishop's courts. However, that will probably be regulated by the Bill, under rules and orders.

389. Are we right in understanding with regard to the power of appointing surrogates and issuing faculties by the archdeacons, that although several of your brethren think these powers important, you do not?

I do not think them important. There was a doubt with regard to the force of certain words in the 4th page, at the 17th line, "Personally, and without process of court;" some of the archdeacons supposed that that destoyed the power of their visitation courts altogether. I believe that it was not intended to do so, and that it does not, in fact, do so.

390. Is there not a clause which saves their visitation courts distinctly?

Yes, but unfortunately it is the same clause, and it was thought by some that those words occurring below the saving words, rather vitiated the force of the words above. I think they do not in fact do so, and therefore I think it is not an objection to press. The third and the main objection which we felt was, with regard to the fee payable by the churchwardens. We thought very strongly that the churchwardens' fee, even when reduced as it is by this Bill, would be a very great hindrance to the carrying on of visitations. We have found that to be so by experience, and we should be very glad indeed if it were possible to abolish the fee entirely.

391. You agree with Mr. Monk that it would be desirable that the churchwardens' fees should, if possible, be abolished?

Yes, I have a very strong opinion indeed about that. Perhaps your Grace will allow me to mention what our experience is with regard to that fee question. The present statutable fee which a churchwarden has to pay at visitation is 18*s*. That is regulated by an Order in Council, but there is unfortunately no provision whatever in many parishes for the paying of it, and the courts have held that the churchwarden is not personally liable. How far they would hold that he was bound to pay it, if he had funds to pay it with, has never yet been settled, but there are a number of parishes where there are no funds, and

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although it has been said that wherever a voluntary church-rate exists, or wherever voluntary subscriptions are paid towards the sustentation of the church, they are available for paying fees, that is immediately evaded. My own experience as archdeacon began just about the time when the compulsory church-rate came to an end, and directly this fee question arose, the answer was, "The rate is raised in our parish for a specific purpose, namely, to maintain the fabric of the church, and to maintain the services," or "The voluntary offertory is contributed with a distinct understanding on the part of the parish, that no part whatever of it is to go to pay legal fees.

392. Does that arise from a general objection to pay legal fees altogether?
Partly so, and particularly when there is no fund to pay them from. The parochial overseer pays a fee, but then he charges it upon the poor-rate.

393. The question is, Ought not the churchwarden to charge his fee upon the church-rate?
But suppose there is no church-rate; that is an exceedingly common case, and it is on the increase every day; the number of parishes which make a church-rate upon the old principle of collecting from everybody is extremely small; there are many parishes where some of the parishioners agree to contribute or to guarantee a certain fund; but I find in my part of the world that there is an universal stipulation in such cases that nothing is to be paid out of this fund, except for some useful purpose in their own parish, and nothing at all out of it; a number of churchwardens have given me that answer. I am only in the position of all other archdeacons and of the bishops, I suppose, in their visitations; that is to say, a large number of churchwardens are kept away because they do not like the squabble about the fees; and of those who do come a great many refuse to pay the fees. The consequence is, that the Visitation Court ceases practically to have the real beneficial influence which it might have, I am persuaded, from the attendance of the churchwardens, simply on account of this fee difficulty; I have taken out the numbers in the case of my own archdeaconry at my last visitation; I have 209 parishes in it; of these 209 parishes, the number in which the churchwardens paid the fees was 105; that is just one half. The number who attended the visitation, and did not pay, were 37, because in accordance with what Mr. Monk said just now, we are bound to admit the churchwardens whether they pay or not; 67 parishes presented no churchwardens whatever; of course in a great number of these parishes there are no legal churchwardens at the present moment, and it is very doubtful whether there are any legal churchwardens in any, because the theory of their holding office until their successors are appointed is an uncertain one. Those are the statistics at the present time, and the state of things they disclose is on the increase in the country districts; that is to say, there is an habitual absence of churchwardens from visitations, mainly on account of this fee question; I am persuaded that if I could say in my archdeaconry there will be no fee charged at the next visitation, a far larger proportion of the churchwardens would come; as to reducing the fee, the present legal fee is 18 *s.*; we reduced it in my archdeaconry to 12 *s.* 6 *d.*; we cut off the fee of the apparitor 3 *s.* 6 *d.*, and of the official 2 *s.*; those are statutable fees; but we thought it best to suppress them; but that reduction made no appreciable difference whatever. The objection is not to pay a given sum, but to pay anything at all. In another diocese, the Diocese of Winchester, they adopted a plan very nearly corresponding with what is proposed in your Grace's Bill; they reduced the fee to 5 *s.* four years ago, and thought that they had settled the whole question for ever by so doing. But the Archdeacon of Winchester informs me that at the present moment the churchwardens of fully one-third of the parishes in that rich county pay nothing, and those of the remaining two-thirds pay with a great deal of grumbling; at each visitation that he holds the payments become fewer and fewer, and the attendance thinner and thinner. Therefore the archdeacons came to the conclusion that if the financial part of the question could be arranged otherwise we should be exceedingly glad to have that fee wholly abolished; and we venture to think that the loss to the fee fund would not be very great, because the difficulty of collecting it is so great, that even if the fee were reduced, as it is proposed in the Bill, we should still have a number of parishes which would practically have no churchwardens legally admitted

admitted at all, and you would not collect by stamps a larger proportion of fees than we now collect at our courts. The loss to the fee fund would probably not exceed some 2,000*l.* a year if this fee were wholly suppressed.

394. Then, looking at the whole matter, you are of opinion that it would be better to abolish the fee paid by churchwardens?

Yes.

395. And that it would be better to abolish it than to lessen any of the fees at present payable by the clergy if the two came into competition with each other?

Yes. At the meeting of archdeacons we did not go into the question of the clerical fees distinctly, at least not in relation to this point at all. We were discussing the matter rather in the dark as to that, because we had no statistics to show what the fee fund was likely to produce from other sources. I think it is the first fee to be abolished, and it is natural that we should feel it desirable to abolish it because we feel the enormous inconvenience existing at present. I do not in the least think the visitations are useless. I think they are doing a great deal of good, and I should be very sorry to see the churchwardens admitted elsewhere than at a visitation. I think that that fee is the first that should be suppressed altogether. There is a word to be said about the clerical fees also.

396. But, as I understand you, whatever personal advantage to the clergy would be derived from the remission of their fees is not so great as the general advantage to the Church which would arise from removing this source of irritation which at present exists on account of the churchwardens' fees?

I quite think that.

397. And indeed these churchwardens' fees have a tendency every year to diminish?

Yes.

398. And as you have no power of compelling a man to be a churchwarden, although you may have a power of compelling him to pay a fee if he is a churchwarden, the thing may disappear altogether?

There is a theory that a man may be compelled to be a churchwarden, but it could only be done, if at all, by machinery which nobody would think of calling into action; as a matter of fact, there are parishes which appoint no churchwardens at all now.

399. Is there any other objection which the archdeacons have felt to the Bill besides this charge of 5*s.* upon the churchwardens, and those other objections which you have mentioned?

The archdeacons have passed a resolution that they did not see why procurations and synodals should be abolished; that they should like them rather to be paid over to Queen Anne's Bounty; that their abolition would be a loss to the Church, which they did not see any reason for. I do not go along with that myself, but that was the general conclusion to which they came.

400. The abolition of the payment of procurations and synodals was intended, of course, as a relief to the clergy?

Yes; but a considerable portion, indeed by far the largest proportion, of the procurations are paid by lay rectors, as was observed just now; at the same time they are very inconvenient things, as regards collection; they are troublesome; what the archdeacons wished was that they should not have the trouble of collecting them, but that Queen Anne's Bounty should collect them.

401. You have not had an opinion upon that, on the part of Queen Anne's Bounty?

No, we have had no opportunity of getting an opinion.

402. Bishop of *Ely.*] Have you any idea of what they amount to, throughout the kingdom?

No; they are a composition paid to the archdeacon in lieu of maintenance, and so on.

403. You have no idea how much would be lost to the Church by the abolition of them?

They amount to 50*l.* in my own archdeaconry; that is all I can say.

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404. Earl *Nelson.*] Are they the same as synodals?

There is no intelligible distinction between them; procurations and synodals go under one head, and I do not know of any real distinction between them; it is one sum, not two sums. I should be very glad myself to see that part of the Bill carried out.

405. *Chairman.*] You are aware that the Ecclesiastical Commissioners now collect the episcopal procurations, and that they have found it somewhat troublesome, and that they propose to hand it over to somebody else?

Yes; in some dioceses, I believe, the episcopal procurations are not collected on that account.

406. On what account?

On account of the extreme difficulty and troublesomeness of collecting them.

407. I believe I was the person who first dropped them, and I do not think that was the reason why they were dropped?

I mean that the Ecclesiastical Commissioners have not collected them in some dioceses, since they have established their claim; in my own diocese they were not collected at all at the bishop's last visitation. I was requested to say, on behalf of some of the archdeacons, with regard to the question of procurations, that although the interests of existing archdeacons are protected from loss by the compensation clause in the Bill the interests of future archdeacons are not provided for, and that some archdeacons for the future will be at the dead loss of the procurations.

408. Have you examined the clause with regard to that?

Yes, I have examined the clause very carefully. You provide, under the Bill for the smaller archdeaconries, whose incomes are at present under 200*l.* a year, you raise them up to 200*l.* a year permanently; but there are a great many archdeaconries which have fixed definite incomes of larger amount, in addition to the procurations; you make no provision for the future to compensate them. I may observe that it does not affect me at all.

409. The Archdeaconry of Ely, for example?

Yes, there are a great many in that position; Oxford, Taunton, and others where they are endowed with a stall. I think that was the only point I had to mention with regard to the procurations.

410. Is there any other point you wish to bring before us?

There was a general feeling that the rules and orders gave a very large power indeed to the Committee who would settle them; to your Grace and your brethren; and although I think it was felt that such a power was necessary, because all these matters could not be embodied in the Bill, still it would be very desirable, if it were possible, that the parochial clergy, who are the largest payers of these fees, should have in some sort their interests guarded in establishing these rules and orders. We had before our eyes the two tables of fees which had been established under statute before, and which in some cases have been found very oppressive. We felt, I think, that it would be quite impossible to ask for any of the parochial clergy to be associated with your Grace and the high ecclesiastical and legal dignitaries, but we thought, under clause 39, which provides for an annual meeting of the registrars of the provinces and of the dioceses, either the archdeacons as a body, or delegates chosen by the archdeacons, might reasonably ask for a seat at those meetings, in order that they might have the same opportunity of representing any point which bore hardly upon the clergy, as the registrars will have of representing any point which bears hardly upon them. I would venture to suggest that that might be embodied in the 39th clause. It provides for the registrars to meet under the presidency of the Dean of Arches, and we thought that perhaps the clergy might have a representation there also, for the fees as they at present exist under the Orders in Council do bear very hardly upon the clergy; many of them at all events.

411. That is a very important suggestion; is there any other point which the archdeacons wish to bring before us. Have you anything to say as to the amalgamation of offices?

It was demonstrated to us, I think, that there was no practical difficulty in the

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the amalgamation, but the archdeacons had a sort of impression that they might not perhaps get all the help from one officer, who is, of course, essentially the bishop's officer, which they now get from their own registrars. At the present time each archdeacon appoints his own registrar, who for a very small remuneration gives him a great deal of help. The emoluments of our officers are exceedingly small, and yet we derive a great deal of assistance from them. This Bill, of course, will ultimately suppress them. It establishes one officer in the diocese, who, as we understand it, is to be the bishop's servant and our servant at once. We conclude that that is the idea of the Bill. The archdeacons doubted whether such an officer, being the nominee of the bishop, and being removable from his office at his pleasure, would be ready to give them the same amount of help which they get now from their own lawyers. They begged me to mention that some of them thought that they ought to have a voice in the appointment, if he was to be joint officer. I do not think that that was the general feeling, and I confess it is not my own. I see no difficulty in the amalgamation, and I see no difficulty in the holding office at pleasure, if it is understood, as I suppose it is, that under the Bill he is to do the work which our present registrars do. We cannot do without such an officer.

412. Bishop of *Ely*.] You see no difficulty in one registrar being the registrar of the bishop and the registrar of the archdeacons?

I see no difficulty, but it has been suggested that in a large diocese, where there are three or four archdeacons it would be very difficult for one officer to attend all the visitations occurring immediately after Easter. Practically, however, I think there would be no difficulty in arranging that, because, as a matter of fact, one man often does hold two of these offices now. My own registrar is also registrar of the Archdeaconry of Oxford. I do not think that the archdeacons felt that as a difficulty; it rather was that they doubted whether he would be so completely their servant that they could go to him for legal help whenever they wanted it.

413. That difficulty, of course, would be, to a great extent, met, would it not, by the office being held during pleasure and not for life?

It was thought so by some of the archdeacons, that it might be met by their having an appeal to the bishop, who, in the case of a complaint, might exercise his power over the registrar, or hold it out in such a manner as to make the registrar do his duty, that is, if it were necessary. I do not think myself it is a practical difficulty at all. It is a question rather for the registrars to say whether the salary is sufficient for all the work that would be imposed upon them.

414. Do you think it necessary that the registrar should attend in person at the archdeacon's visitations?

In most cases it is a solicitor who does the work; you must have some aid; I should not like to hold a visitation without a legal officer to assist me; I think that is essential.

415. A clerk would not at all answer the purpose?

I do not think a clerk would do. As a matter of practice, at my own visitation I have always had the solicitor and his clerk with me; he is the deputy registrar.

416. The registrar who is to be the registrar both of the bishop and of the archdeacons, must consider himself (or his partner, which is the same thing) bound to attend the archdeacons at their visitations?

Yes, I think so; I think the Bill provides that he shall, by one of its clauses.

417. It was stated as a difficulty that he might have to attend too many visitations in the year; if there were four archdeacons in the diocese, there might be four visitations in the year?

Yes.

418. Do you think it would be impossible in ordinary cases for a solicitor holding the office of registrar to attend all those archdeacons in all their visitations?

No, not if the office were held by a firm of solicitors.

419. *Chairman*.] At how many centres do you hold your visitations?

At five.

420. And each of the other archdeacons?
The Archdeacons of Breckingham at four or five; the Archdeacon of Oxford at four I think.

421. Is it at all necessary to have so many?
It is exceedingly desirable, partly on the churchwardens' account; the churchwardens are rather slow about the visitations altogether, and it is a great object to them not to have to go a great distance, and although my archdeaconry is not a large one in area, it is a long one from one end to the other.

422. Bishop of *Ely*.] Do you think that requiring the registrar to attend the archdeacons at all their visitations would be a tax upon him beyond what the remuneration of the office would entitle you to expect?
The question of remuneration is a very difficult one. I can only judge by the work they get done for the present remuneration. I do not believe that my registrar nets above 60 *l*. a year, certainly, from all sources.

423. Do you often communicate with him?
I should go to him for any legal advice I wanted.

424. As a matter of fact, can you give us any idea how often you communicate with him?
Not half a-dozen times in the year; perhaps less. But he is always at my visitations, and collects the procurations, and so forth; that takes up five days of his time; it is a heavy pull upon him; he has a clerk with him.

425. *Lord Steward*.] He gains indirectly, does he not, by the status that he acquires by being your officer, and by being brought into communication with the clergy?
I think he likes the status; that has something to do with it.

426. Therefore we may take that into consideration together with the remuneration, and set it against the value of the work that is done?
Yes.

427. Lord *Hatherley*.] When you speak of five days, do you mean one at each centre?
Yes, that is in two years out of the three.

428. Bishop of *Ely*.] Does he pay his travelling expenses?
Yes; I pay him nothing whatever except what he gets out of these fees, the amount of which is becoming very small indeed.

429. In fact, in the diocese of Oxford there would be required of the registrar by the archdeacons every year something like from three weeks to a month of travelling attendance?
Yes; at the present moment the same person is registrar of the Archdeacon of Oxford as well as of the Archdeacon of Berkshire, and he does the work of both. I do not think the difficulty of place is any great difficulty; the two archdeacons arrange with one another about that. We hold our visitations as soon after Easter as possible, arranging not to interfere with one another. And the same thing might be done if he were registrar for three or four archdeacons.

430. *Lord Steward*.] I understand from what you have said that you and the whole body of the archdeacons would view with great regret any legislation interfering with the efficiency of the archdeacons' courts?
Yes; with the exception I made as to the issue of faculties and marriage licences. I do not think we care much about them in either case. In other respects, we should be very sorry if there was any interference with us.

431. Being brought into communication with the clergy locally, and with the churchwardens, you think that you exercise a healthy influence in that way?
Yes. I have distinctly seen great good arise from the archdeacon's visitations. I should be very sorry, indeed, if the churchwardens were admitted in vestry. I think the visitation is really a useful thing to the churchwardens, and I should be very sorry to see the practice of admission in vestry habitual. There is a power to admit now out of court. We have surrogates who can admit, and do admit constantly, when churchwardens are prevented from coming

ing to visitation. There is, therefore, a loophole at present. But if a measure were passed which allowed of the habitual admission of churchwardens in vestry, the attendance of the churchwardens at the visitations would practically come to an end. It must do so. They would not come simply to be visited and to hear the archdeacon's charge or the bishop's charge. Their idea of the visitation is connected with the admission to the office. They would come, I think, willingly for admission to the office if the fee were at an end. I should be sorry to see them drop away from the visitations.

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432. Have you found, as a fact, that a great many ecclesiastical disputes are nipped in the bud at the visitations which might otherwise have grown into more formidable proportions?

Yes, they have Articles of Inquiry sent to them before the visitation; they bring their answers to them, and they constantly raise questions of local interest; questions about pews, and the order of services, and so on, which trouble churchwardens' minds; and I have constantly known parochial disputes settled at a visitation by a little talk, when the archdeacon or the bishop have sat in court themselves and seen the churchwardens personally.

433. I understand you to say that the faculties issued by your court are cheaper than the bishop's, and you anticipate that they will be equalised under the Bill?

We shall come to an end under the Bill.

434. Do you anticipate that the equalisation will take place by the bishop's being lowered or yours being raised?

I was in error in saying that they would be equalised under the Bill, because ours cease to be under the Bill. What I meant was, that under the Bill the expenses of obtaining faculties would possibly be reduced, and I think it most desirable that they should be reduced. The cost of a faculty is considerable now, and it is most desirable, as we are always telling the clergy, to do nothing without a faculty. We should get a great many more faculties issued if they were cheaper.

435. *Chairman.*] What is the cost of a faculty?

The fee for a faculty is five guineas; that is the statutable fee under the Act; in practice it always comes to more.

436. Are you aware that in some dioceses arrangements have been made for reducing it to 2 *l.*, together with 10 *s.* for the stamp?

Yes; our hope is that, supposing this Bill becomes law, the cost of a faculty will be reduced as low as possible under the rules and orders to be made by your Grace and your assessors.

437. Lord *Winmarleigh.*] Is there any difference in the extent of a faculty between a bishop's faculty and an archdeacon's?

Only to this point, that the bishop's faculty extends, of course, over his whole diocese, whereas the archdeacon's only extends to his archdeaconry.

438. There is no difference in the power?

There is no difference in the power; it is a concurrent jurisdiction as far as it goes.

439. *Lord Steward.*] Have the archdeacons expressed any opinion with regard to the destination of the funds to be raised under this Bill?

They expressed an opinion upon one or two important points, which perhaps I ought to have mentioned. One was as to the salary of the Dean of Arches.

440. What is the opinion they entertain on that point?

I have their resolution here. These are the terms of their resolution: "We entertain a strong objection to the payment of the Ecclesiastical Judge, constituted under the Public Worship Act, being defrayed from fees levied on the parochial clergy and laity; no adequate proportion of the same salary being charged upon the higher dignitaries of the Church." The meaning of that being, that if you take the sources from which the fees come; they come mainly from the parochial clergy. There is a sum paid by the higher dignitaries upon their consecration, but it is a small sum comparatively.

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441. That portion which is not raised from the parochial clergy will practically be raised from the marriage licenses?

A good deal will be raised from the marriage licenses, and a certain amount from the faculties.

442. Do you agree with what was stated by the last witness, when he said that he saw no reason why the salary of the Ecclesiastical Judge should be defrayed from funds raised by fees on marriage licenses?

I suppose the answer to that is that the amount raised from marriage licenses has hitherto gone to ecclesiastical officers, either the registrars, or the chancellors, or the surrogates.

443. Are you acquainted with the Report of the Marriage Law Commission?

I think I read it at the time it was published, but I do not remember it well now.

444. Will you be good enough to read the recommendation of the Royal Commission upon the grant of licenses?

The recommendation of the Commissioners is this: "If these recommendations are adopted the certificate will in all cases supersede the necessity for a license, and we recommend that the practice of granting common licenses in the United Church of England and Ireland, and registrar's licenses, and the powers of licensing ministers among the Presbyterians in Ireland, should cease." They proposed to abolish them.

445. Will you read what follows in the paragraph about fees and stamps?

"It would, in our opinion, be highly desirable that the exaction of fees and compulsory payments of every kind for the solemnization of marriage, or for the fulfilment of any preliminary conditions of marriage prescribed by the State, should be wholly abolished; that no stamp duty should be imposed upon any certificate, notice, or other document required by law for the purpose of marriage, and that postage should not be chargeable on any official documents passing through the post in compliance with the provisions of the law of marriage."

446. Lord *Hatherley.*] And then they say, I think, that if this recommendation should not be adopted they recommend more moderate fees. I think you will find that, if you look on?

Yes. "If, however, it is considered necessary still to charge fees for the solemnization, or for any of the other legal requisites or incidents of marriage (either on account of the difficulty of replacing the deficiency which their abolition might cause in the incomes of some of the parochial clergy, or for any other reason), we think that a uniform table of such fees upon as moderate a scale as practicable should be settled by law; and that such fees should not in any case be augmented by the imposition of stamp duties such as those now imposed in England on common licenses."

447. *Chairman.*] Does that modify what was said before, or not; I am not quite able to follow it?

I am not quite sure what the noble Lord who put the report into my hands meant.

448. I think the total abolition applies to all fees paid to the clergy, as well as those for marriage licenses?

Yes.

449. It amounts to a recommendation of the abolition of all fees upon marriage in any form whatever?

Yes. For myself, I confess I have no particular sympathy with the desire to get rid of the fees on licenses. It seems to me that it is a luxury; it is just the one thing which I should have thought might have remained as it was, except that I do not see why the surrogate's fee should be reduced, and not the rest of this fee. I do not quite share the feeling about that, unless the whole system of banns and everything connected with them was altered, and put upon a different footing; but the issue of marriage licenses is diminishing in number.

450. Is

450. Is there any other point that you would like to mention?
I think not.

451. You stated that the clergy were of opinion that it was unreasonable or undesirable that fees charged upon them should go to the payment of judges?
The archdeacons said that they thought it unreasonable that fees paid by the parochial clergy should go to the payment of the judge.

452. The judges?
No; of the ecclesiastical judge.

453. He being something quite distinct from a chancellor?
It is distinctly the one judge that they refer to.

454. Did they state any reason for that?
No, I do not think they gave any reason.

455. I think you said that it was hard upon the parochial clergy to pay fees which were not paid by dignitaries?
That was part of the resolution of the archdeacons which I read; they considered that so large a proportion of the fees came from the parochial clergy.

456. Do you suppose that in that they meant so large a proportion between the individual clergyman and the bishop, or between all the clergy and all the bishops?
I should think they meant in the aggregate.

457. Do you happen to know how much is paid by each bishop at the time of his appointment to his office?
No; I know the amount is very high, but a large portion of that is, I think, a stamp duty to the Crown.

458. A portion, but not a large portion; another portion I think you will find goes to the parochial clergy in the shape of a contribution to Queen Anne's Bounty; do you happen to know how much per annum each bishop pays to the parochial clergy in the form of a contribution to Queen Anne's Bounty in lieu of the amount payable on his appointment?
No.

459. Perhaps you and the other archdeacons will take an opportunity of informing yourselves upon that?
I read this as the statement of the archdeacons. I think it is quite possible that we may be very ill-informed upon that point. Of course, as your Grace is aware, the parochial clergy pay their share of Queen Anne's Bounty, too, because they pay tenths and first fruits.

460. Earl *Stanhope.*] With regard to the establishment of a permanent registry office in each diocese, are you in favour of that?
Unquestionably; we have one in our diocese.

461. Are you also in favour of the registrar being removable at pleasure?
I do not see any objection to it at all.

462. How would you reconcile the two; how would it be possible to remove a registrar at pleasure, and yet have an office independent of him permanent in each diocese, because they each have their own offices, I suppose?
He is only a tenant during his term of office, I apprehend.

463. At present it is usual for the registrars to find their own premises, is it not?
I do not know whether that is general; it has never been so with us; we have a registry belonging to the diocese, which the registrar only occupies so long as he holds office. I do not know whether that is usual; I should think it is most desirable that it should be so everywhere. As a matter of fact it is not the place where he does his business; it is a distinct and separate building.

464. Lord *Winmarleigh.*] I understood you to say that in case the fees of the churchwardens were done away with you calculated that the loss would be about 2,000 *l.* a year?
Yes.

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465. On what basis did you make that calculation?
I calculated that half the churchwardens would not pay the 5 *s.* stamp at all.

466. Is that from experience?
Yes, from experience.

467. You think that half have never paid?
Of late years, since the abolition of compulsory church-rates, half the churchwardens in country districts have never paid the fees.

468. Do you observe any diminution in the amount collected from year to year?
Yes, I see it every year, because it spreads in this way: one churchwarden who has paid the fee out of his own pocket one year communicates with another churchwarden in a neighbouring parish, who has not paid, and he refuses the next year.

469. Is the diminution going on rapidly?
Yes, very rapidly; it is increasing.

470. Can you give me the figures with regard to your own district?
I cannot give you the figures except from the last visitation, but I am persuaded that the number who did not pay at the last visitation was greater than at the previous one, and that is the impression of other archdeacons. Their belief is that every year is making it worse, and that I think will be the case, whether you exact the fee by stamp or otherwise.

471. Earl *Nelson.*] I wish to have the facts as to procurations clearly stated The procurations are only levied upon rectories, are they?
Yes, they are.

472. Are they levied on vicarages as well?
Yes, on vicarages too. In the case of a vicarage the lay rector would pay his procuration, and the vicar would pay his; both would pay something.

473. Are they limited to a certain amount?
They are limited to the old parishes; the new parishes pay none; it is merely an ancient customary payment.

474. Lord *Winmarleigh.*] Could you state the proportion according to their income which the different incumbents pay now?
It bears no relation to their present incomes, because these procurations are 500 years old, most of them; they were charges upon the then income; my procurations stand at exactly the same figure as they did 500 years ago to a halfpenny; therefore they bear no relation to the present income of the clergy, except so far as the present incomes have varied in proportion to the incomes of 500 years back. It is a wholly arbitrary payment; that makes it a very undesirable one. The amounts are not large; they come to 13 *s.*, 14 *s.*, or 15 *s.*; the total amount of the procurations in my archdeaconry is about 50 *l.* a year in more than 200 parishes.

475. There is no rule by which you can calculate the proportion it bears to the income of the clergy?
Not the least; it has no relation to it; it is a fixed sum; I should be very glad to see procurations at an end.

476. Do you think it would be possible to arrange them otherwise?
No, I think not; I think if you touch them you must abolish them; they would not stand pulling about.

477. *Lord Steward.*] Would you think it a fair statement that procurations and synodals amount in the aggregate to 4,000 *l.* a year throughout the country?
I am afraid I could not answer the question, because I have never gone into it at all; I could not express an opinion upon the subject.

The Witness is directed to withdraw.

MR. JOHN B. LEE is called in; and Examined, as follows:

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478. *Chairman.*] You are Secretary to the Archbishop of Canterbury, and to the Bishop of London, and to the Bishop of Winchester?
Yes.

479. And have been Secretary to the Bishop of London for a long time?
Yes.

480. Therefore, of course, you know very well the duties of a secretary?
Yes.

481. In the country dioceses, do you see any objection to the union of the offices of secretary and registrar?
No objection occurs to me in those cases where the bishop resides in his cathedral town as a rule; but I think there are a good many cases in which the union would be objectionable. Take the case of the Bishop of Winchester, who resides at Farnham. Under the present plan the office of secretary is to be grafted on that of registrar. The registrar would carry on his work at Winchester, and the secretarial work would also have to be done there; and that would apply to the Bishop of Durham as well, who lives at Auckland, and perhaps to the Bishop of Rochester. In those cases, I think there would be a good deal of inconvenience.

482. But does not the Bishop of Durham's secretary at this moment reside in London?
Yes.

483. That is further from Auckland than Durham is?
No, I think, practically, not at all, because it is just as easy to communicate by letter with London as with Durham, and at Auckland there is no one living there whom the bishop could very well appoint.

484. But in cases in which the registrar would be accessible, you see no difficulty in the two offices being united as a general rule?
No, I should think not.

485. In fact, is it your cognisance that in a great many instances in country dioceses they are united?
They are held by the same person.

486. Now apply that to the Archdiocese of Canterbury; do you think it would be possible to unite the offices of registrar of the diocese (not province) and secretary?
But that is not contemplated, I think. I believe the office of diocesan registrar is abolished by the Bill; it is the provincial registrar that is kept.

487. They are all united?
Yes; but the office of secretary is grafted on that of provincial registrar.

488. They are all united together; the three offices of registrar of the three registries are united, and the same person who is registrar is secretary?
Yes; but the working of that is that on the first vacancy the diocesan registrar is to be abolished.

489. That is merely technical; it is that they are all to be united. Now, I want to take it *seriatim*, and to know whether you think that it would be possible for the same man to be secretary to the Archbishop of Canterbury, and yet to be registrar of the Diocese of Canterbury?
Yes, I think so.

490. No great difficulty would arise there, except from the fact that the registry must be in Canterbury?
That would be the chief difficulty.

491. Then Mr. Dyke is of opinion that the office of provincial registrar is so important that it ought not to be united with that of secretary; is that your opinion?

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I do not see myself why the two should not work together, except as regards the matter of remuneration. I think that is the great difficulty; that is to say, at present all the work of the provincial registry is carried on at Doctors' Commons in a private house; a house which is hired at a very considerable rent; and as the registry depends upon marriage licenses, it follows of necessity that the business should be conducted at Doctors' Commons.

492. That is to say, as long as people are in the habit of going to Doctors' Commons for marriage licenses?

Yes, unless you transfer the whole machinery; but you cannot transfer one registry without the others. If you take away one office entitled to issue marriage licenses, then the other offices would get these licenses.

493. Do you mean that you could not remove the Canterbury Registry from Doctors' Commons without also removing the London Registry?

No, I think you could not, having regard to the possibility of compensation to the officers in case marriage licenses were done away with.

494. Then, excepting the local difficulty, you do not see any great difficulty in the union of the office of secretary to the Archbishop with the registrar of the Vicar General's office?

No, not in the actual conduct of the work.

495. Then with regard to the Registry of the Arches, could that also be united and held by the same person?

I have no experience of that at all; I do not know what the work is.

496. It depends on the number of days when the Court sits, I presume?

Yes, it does.

497. Have you any experience of the Registry of the Faculties, which is another office?

No, I only know about it generally; that is office work altogether, I believe.

498. Would you explain to the Committee generally, what the duties of what is called a bishop's secretary are?

The duties of a bishop's secretary are to carry out all that business in which the clergy are concerned; that is, the business relating to ordinations, institutions, licenses, and everything else connected with diocesan work. Then, besides that, he has to discharge a good many personal duties to the bishop; a good deal of work other than the strict work relating to the clergy; other questions arise in a bishop's public office.

499. Such as giving legal advice to the bishop, you mean?

Giving legal advice; and probably in your Grace's own case there would be a great many things that a secretary would do, not strictly connected with the work of the clergy, from your public position.

500. For example, as to bishops in the colonies, and as to communicating with the Colonial Office or the India Office, on the consecration of new bishops?

Yes, there is a great deal of work which flows from that.

501. And as to making arrangements for the confirmations of the bishops of the provinces, and so on?

Yes.

502. Then do you think that that work could be united with that of the registrar?

I think there would be no difficulty about it if the work of the two offices were concentrated, if they were to be carried on at one place; but otherwise, if the one is to be conducted at one end of London and the other at the other, I think a great deal of inconvenience would arise.

503. Would you explain to the Committee the subject that was touched upon before about the Act Book of the Diocese; what is the Act Book of the Diocese?

The Act Book of the Diocese is a very careful record of all the transactions that

that take place in the secretary's department as regards the clergy. Every act is recorded, every ordination, every institution, licence of a curate, and licence of every kind that issues; everything in fact, that is done in the secretary's department is recorded in the Act Book.

504. And not in the registry of the diocese?

No, not in the registry of the diocese. These Act Books are really received as evidence by the Courts; any extract from them, signed by the officer in whose custody the book is, is received as evidence.

505. You find it necessary, I presume, to have a clerk to keep this book?

Yes, more than one; I think for the business relating to the see of London, I ave got two clerks constantly employed.

506. You have read the scale of remuneration that is proposed if the offices were united?

Yes.

507. What is your opinion about that?

I think that it cannot possibly be enough if the registrar is to provide these offices at his own expense.

508. The buildings, you mean?

Yes; if he is to hire a building for the conduct of all the register business done at Doctors' Commons, he could only do that at a very heavy rent, and then there must be a separate staff of clerks there; I think Mr. Dyke said three clerks.

509. But if the office of registrar were united with the office of secretary, the difficulty would be diminished, at all events?

If the whole work was done under one roof, certainly; but that is the great difficulty, the expense of it, if the present system is to be carried out.

510. You do not consider then that the remuneration which is proposed would be sufficient, considering the great outgoings?

No; certainly not.

511. Can you illustrate that?

Taking the case of London, there is no official building in which the work is to be carried on and the records to be kept; but the office is the private property of one of the present registrars. This office, on account of the marriage licenses, must be maintained at Doctors' Commons, and, on the death of the present owner, either arrangements must be made to hire the present building or fit offices elsewhere must be secured; in either event at a very heavy rent.

512. Then you consider that very considerable inconvenience is likely to arise in future to the public from the want of any public registry belonging to the diocese?

I think so.

513. Has it ever occurred to you that such a public registry might be found in connection with the cathedrals?

Your Grace knows that in the case of St. Paul's the muniments were deposited there for a certain time, and they were displaced; it was found inconvenient.

514. There must be room enough in St. Paul's, I presume?

There was a necessity for constant reference to them, and I understood from Mr. Shephard, the acting registrar, that they found very great inconvenience from their not being under his roof.

515. They are in his private house?

Yes, they are in his private house; but he has had it adapted as a muniment room, and it is very convenient for the reception of all these things; but I think I have heard him say that he could not possibly get on if the muniments were elsewhere. Supposing he were to die it would be quite impossible to hire that house, or that portion of it, under a rent of, I should think, 300 *l.* a year. Then if you add to that two clerks, say, who would have certainly not less

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than 250 *l.* between them, that makes 550 *l.*; and you assign a salary, if I recollect right, of 950 *l.*; it is not placed in the present Bill, but it was contemplated that there should be a salary of 950 *l.* assigned for the duties of these two offices. It would be absolutely impossible to conduct them for that.

516. That is a strong objection which you feel to the Bill, that it does not provide sufficient remuneration for the officer who is to hold the united offices?
I think so; certainly, speaking of these two cases, of Canterbury and London, with which I have special acquaintance, I cannot imagine that any one could conduct the work on the salary proposed to be assigned.

517. But then you think that objection would be diminished if a proper registry were provided in one central place in which the whole work of the united office might be done?
Yes, at an expense other than personal to the registrar.

518. Now, it is proposed in this Bill, instead of paying directly through fees, to pay through stamps. I understand that you have a strong objection to that?
Yes.

519. Would you state your grounds?
I look upon the collection of these fees by stamps as an absolutely unnecessary burthen upon the officers, and it must be productive of great inconvenience and trouble, and as far as I can see without any corresponding advantage. For, if you Grace recollects, the Act of Parliament of the 38 & 39 of Victoria requires annual returns of the fees received during the year; so that the amount of these fees is already clearly ascertained, and I cannot see what necessity there can be for anything more than paying that fund, the fees which are so received, in to the Ecclesiastical Commissioners, and then letting them pay them out in salaries. I cannot see the object of substituting stamps for these fees.

520. You agree with Mr. Dyke that there would be a practical inconvenience, because no ready money would be passing?
There would be. As the plan stands at present, I read it that the accounts are to be made up at the end of the year, and then the salary paid to the officer at the following Lady-day; so that they would be positively always a year behind.

521. Have you any other objection to the stamps?
My objection is, that I cannot see the use of them. If you could get by other means (which you can by a Parliamentary Return) at the amount of these fees, that is the only object in resorting to a stamp process, I think.

522. You think there must be a sum of money lost in the issue of the stamps?
At all events it would involve a deal of trouble on the part of officers, keeping an account of all the fees and an account of the stamps as well, because they are to be distributors of stamps.

523. Is there any other point which you wish to bring before us?
With regard to the rules and orders, there has been some observation made upon them. What strikes me as objectionable is, the large power given of making regulations and imposing obligations by means of these rules and orders. A great burthen and expense may thus be imposed upon the holders; and this would apply not only to future officers, but to present ones, under the Act. For instance, the salaries are to be subject to all such expenses and disbursements as may be prescribed by the rules and orders. Then new duties may be prescribed; the providing of buildings for the preservation of the records may be required. All this is possible under the rules and orders. What I would wish to urge would be, that if the officers are to be paid by salaries, these salaries ought to be clear of all expenses whatever. Let it be known what the salaries are in substitution of the fees; but do not go and burthen these salaries with unknown expenses.

524. You hold that there may be a great deal to be said in favour of salaries as opposed to fees; but that, if so, the salaries must be real?
I should think so. You cannot possibly tell what burthens may be imposed by the

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the rules and orders upon the holder of an office paid by salary. I think that is a very great defect in the Bill. Then I would also like, if your Grace would permit me, to refer to another question; that is, that the present holders of these offices of chancellor and registrar are not sufficiently protected from loss, in this way: under the 52nd Section they are to be paid by a salary fixed by way of proportion. The general fund out of which these salaries are to come is composed partly of fees on marriage licenses and other receipts, and partly of what are called ecclesiastical fees; there is a marked distinction, as has been urged before, between the marriage license fees and ecclesiastical fees. The ecclesiastical fees are liable to be varied by existing statutes; but not so the marriage fees. The chancellor and registrar derive their incomes in a main degree from these marriage license fees.

525. May I stop you for a moment to ask a question; did we not hear from Mr. Dyke that the marriage fees have been greatly altered by an order of the Archbishop, the Bishop of London, the Master of the Facilities, and the Judge of the Arches?

Only with the consent of the officers.

526. But those were all the officers concerned, were they not?

The registrars also; all those interested concurred in it. He maintained decidedly that there was no power in the Archbishop, or Bishop, to make these alterations without the consent of the registrars. It is advowedly the policy of the present measure to reduce the Ecclesiastical fees. In such case the chancellor and registrar will suffer in this way; their salaries are to depend upon the amount of the fee fund for the time being; so that the salaries will be diminished in proportion to the reduction of fees which now form no part of their endowment. They derive their fees from marriage licenses, which are invariable; whereas, a very large portion of the fee fund arises from ecclesiastical fees which are liable to be varied; so that those provisions may be applied to ecclesiastical fees, and so reduce the income of the officers. It is to protect these holders of offices appointed prior to 1836 from this loss, and from the charges imposed on the fund by various sections in the Act, that the 53rd Clause is framed. I would urge on the part of the chancellors and registrars that, notwithstanding the provisions recited in the Preamble, no distinction ought to be made between officers appointed prior and those appointed subsequently to the Act of William; that is to say, the Act of 1836; because on the passing of the Probate Court Act provisions which had remained dormant for so long a period were not allowed by Parliament to be brought into force, and the holders of offices then abolished were compensated. The 20 years which have since elapsed give additional ground for the claim now made.

527. As I understand, you object to a distinction being made between the officers appointed before 1836 and those appointed since 1836?

I do.

528. Though the Act of Parliament said that officers appointed after 1836 were to hold their offices subject to any alterations which Parliament made, you think that that has been so long in abeyance that it ought not to be insisted on?

I think so; and not only so, but in the case of the Probate Act that provision was disregarded.

529. You are aware that in subsequent Acts to that of 1836, allusion has been made to their holding their offices in this way?

No, I am not aware of that; it is recited in the Preamble of this Act; the first Act was the 6th & 7th of William the Fourth; then the next is the 7th & 8th of Victoria.

530. It has been recited in several Acts, has it not?

Only two; the first Act, that of 6 & 7 Will. 4, c. 77, contemplated some general enquiry into the working of the Ecclesiastical Courts; and then it provided that any vested interest in an office to which a person should be appointed after that year should not entitle him to compensation in the case of the abolition of the office by Parliament. The 7 & 8 Vict. c. 68, extended that provision (which was only to apply for one year) and applied it to all appointments since

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since the Act of 7 & 8 Vict., and provided that the holders should take, subject to all regulations and alterations affecting the office which might thereafter be made by authority of Parliament, and should not acquire any claim or title to compensation in case the office should be thereafter altered or abolished by Parliament. Now, I contend that under those sections, looking at the question legally with regard to the holders of these offices, these provisions do not apply to them; for their offices are not abolished, neither are they altered. There are a variety of offices that are proposed to be abolished by the Bill, but these offices of chancellor and registrar are absolutely maintained; it is simply that new duties are imposed on them, but the office remains as ever.

531. You have referred to the Probate Act; what was done in the case of the officers on the passing of that Act?

On the passing of that Act their claims to compensation were recognised by giving them the prior choice of employments under that Act; in fact they were fully compensated.

532. You perhaps are aware that the compensation given to them was declared to be that which would be given on the footing of persons who held office removable at pleasure, which is slightly different. You see exactly the same question arose on the Probate Act. It appears that certain officers who had been appointed before an Act of Parliament, were considered to have such an interest as could not be interfered with; but those who had been appointed after that Act, had received warning, and therefore, instead of being compensated exactly on the same principles as the other, they were compensated on different principles, that seems to be the state of the case?

But in point of fact they received full compensation in the way of employment under the Act of Parliament; they received employment equal to that which they surrendered, the bringing into force now an Act of Parliament passed 40 years since seems harsh. Legally, everybody that has taken an office has taken it subject to these Acts of Parliament; I do not dispute that for a moment.

533. What are the clauses in the Bill that seem to you to affect that question?

The clauses in this Bill affect these officers in the way which I have described; that is, that they give them a salary, but then that salary is liable to be diminished by the diminution of the ecclesiastical fees.

534. But is it not so now; have not the two Archbishops and the Lord Chancellor the power of altering the fees from year to year?

No, not the fees of the registrars or chancellors; they have in regard to the secretarial fees.

535. But they have the power of altering all fees on consecrations and faculties?

But they form a very trifling item; and if you look at the Returns to Parliament, you will find that the marriage license fees were the staple of these offices.

536. Then what you object to is that now there would be a power of altering the marriage license fees?

No, you cannot alter the marriage license fees, but you alter the salaries which are paid from the marriage license fees.

537. Which is the clause that says you may alter the salaries of existing holders?

In the way that I have described; that existing holders are to be compensated by a salary, and that is proportioned to the fee fund for the time being. First of all you ascertain what proportion the fees derived by the officers bore to the total of the old fee fund, and then you apply that proportion to the new fee fund.

538. Then, as I understand you, your objection is this, that you do not give these people more money than there is, because the fund diminishing, the salaries of the divisions must diminish also?

Yes; but I contend that it is an unfair thing to diminish the salaries of these holders

holders who derive at present their incomes from marriage license fees, and not from ecclesiastical fees.

539. But how do you hold that they are to be protected, seeing that the fees may dwindle away from year to year, and the licenses, and everything else?
They will only dwindle away by abolishing them, and reducing them.

540. Supposing the public took it into its head generally to be married by banns, there would be an end of it?
The system would collapse then.

541. I do not think you have attended to this, that the present payments to all these officers are of a fluctuating nature, and that the Bill in continuing a fluctuation merely perpetuates the existing system?
If they depended upon fees which are liable to fluctuation, I grant that their salaries ought to depend upon the fund; but they do not. So long as marriage licenses exist, their income does not vary in any way.

542. I think that requires proof, because licenses may diminish any day?
Yes, they may; but then this fund will be diminished by the action of your Grace, and others who are authorised to diminish them.

543. Then, as I understand, your contention is that the officers appointed since 1836, ought to be in the same position as the officers appointed before?
Yes; and that would be effected by, simply, in the 53rd Clause, I think it is, striking out the distinction; not making a distinction between persons appointed prior to 1836 and those appointed after.

544. Is there any other point which you want to draw attention to?
There is one more point which I should like to refer to, as regards what are called the ecclesiastical fees. I think there is a misapprehension about them, about their pressing so heavily upon the clergy. The ecclesiastical fees really paid directly by the clergy are very few. They are the fees on ordination, the fees on license, and the fees on institution; but all the other fees that come under the designation of ecclesiastical fees are not paid by the clergy as a rule; faculties, for instance, and all those things.

545. No consecration fees?
No; but looking through the returns which I have before me of all the items of receipt which form the secretarial income, there are really only those three that fall directly upon the clergy. There is a variety of work here that consists in looking after deeds, and so on; the payment for those comes out of a fund, not out of the pockets of the clergy; so that there is no real ground for the cry that has been made about their being over taxed. One other point which I should like to refer to is about the tenure of the office, if you graft the one on the other.

546. *Lord Steward.*] What is your own tenure?
I hold the office of registrar to the Bishop of London, and also that of secretary. The registrar's office is a freehold office for life, and the secretarial office is of course at will. The reasons for maintaining the office of registrar as a freehold, will be stated to the Committee by Dr. Deane, who is summoned here on Wednesday, and he will do it very much better than I could; but I would remark that as to the office being tenable at will, after the office of secretary shall have been grafted upon it, it is really a matter of grave importance to the bishops, for if they find a freehold in existence, they will be precluded from the choice of an officer who is really necessary to their comfort, namely, the secretary. I think they should be left free to choose that officer.

547. Bishop of *Ely.*] Is it not true that the office of bishop's secretary has been only 60 or 70 years in existence?
Yes, I think it is not more than that. It sprang out of the necessity of the case. I think it sprang up in this way: that at the time when it was created there was a great deal of work in the registrar's office which was of a testamentary character, testamentary and matrimonial business, which necessitated a registrar being a proctor. I fancy the proctors at that time had not the same large experience that a solicitor in general practice has, and the bishop found

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found that it was convenient to him to have a different class of officer about him. I believe that was the origin of the secretary.

548. Now if the offices were united, and the tenure of the joint office was a life tenure, would not the necessity of the case be very likely to cause the bishop to have to appoint a private secretary again?

I should think so.

549. So that you think it very likely that if you united the offices and made a life tenure, he would find it necessary to have a confidential lawyer who would be entirely of his own appointment, and holding during his pleasure; and so he would go over the process which has been gone over during the last 70 years, and you would find the secretary appearing again?

You would revert to the old process.

550. That, in your opinion, is likely to be the result?

I think very likely.

551. *Chairman.*] Might not another result be, that the bishop would cease to give advice, as he at present does, to the clergy in legal matters, and would say, "If you want advice, you must go to a solicitor and pay for it"?

I think the tendency of all this measure is to produce that effect on the clergy.

552. At present, the clergy are in the habit of writing continually to ask the bishop's opinion, that is to say, the opinion of his secretary or vicar general, on a great number of legal matters in their parishes, to which questions they get answers?

Yes.

553. But in the event of their being no officer of this sort attached to the bishop, the bishop would in all probability say, "Really, I know nothing about it, you must go to your own solicitor"?

Yes, it must come to that, and I think the clergy would find a great burthen thrown on them.

554. *Lord Steward.*] If it is necessary for the comfort of the bishops, that they should be free to choose their own secretaries, is not that an argument, so far as it goes, against uniting the secretaryship and the registrarship?

Yes.

555. Lord *Hatherley.*] You said you could not see the object of having stamps; you are aware that the whole of the fees in judicial offices are collected by stamps?

Yes.

556. Is not that one means of securing a cheque upon the account of receipts from fees?

I have never known what the process will be that will be applied to this; I cannot say how it will be done.

557. I thought your remark was general, that it was useless to have stamps at all; it arose from the salaries being substituted for fees, and then when salaries were substituted for fees, the fees had to be accounted for to somebody?

Yes.

558. And in order to have them fully and fairly accounted for, there was required to be the purchase of stamps, instead of the direct payment of fees; the registrar or other officer handed over the stamp which the person had procured?

Yes, I only meant that I could not see the use of it in such a case as that of the officers here, who are men of position and trust.

559. They are men of that position in Chancery also, are they not?

These officers being compelled to make a return to Parliament, you could get at the amount in that way. I do not see what would be gained by it, but certainly the trouble would be intolerable. And, then again, there is another point. The stamp system is to be audited by the Ecclesiastical Commissioners, I see. How can they make an effectual audit? They would have to go all over the kingdom, or else summon the registrars up to London.

560. *Lord Steward* ] I was going to ask, have you considered the Clauses of the Bill, 50, 51, and 52, and the following Clauses, in regard to the duties thrown upon the Ecclesiastical Commissioners; and are you aware, whether the Ecclesiastical Commissioners have any machinery for carrying out the duties so thrown upon them?

No, I fancy it would be a new machinery to be created.

561. If I understand you rightly, your objection to Clause 53, in relation to the compensation part of the Bill, is this: you say that the marriage licenses, being a constant quantity, afford a substantial remuneration to the existing officers, and, therefore, that an alteration of the ecclesiastical fees affects them but very slightly?

Yes.

562. But then under the present Bill, in addition to the compensation to holders of offices, you had thrown upon the fund a payment for the salary of the provincial judge, which in the papers circulated among the members of the Committee, I find put down at 3,000 *l.* a year, and that would be *pro tanto* a diminution of the security which the claimants for compensation at present have?

Yes.

563. And other expenses created under the Act are also thrown upon the fund?

Yes; a good many.

564. And all those new charges created under the Act would, *pro tanto*, diminish the security for the compensation?

It would diminish the income to be derived by the officers who derive their salaries from the funds at the time being.

565. With regard to the payment of the bishop's secretary, why should he be paid by salary rather than by fees?

I do not know that at all, except that it is part of the scheme; I do not know the advantage of it.

566. If the bishops' secretaries are to be paid, is there any reason why they should be paid by the general fund rather than by those whom they advise and whom they assisted; I mean the bishops themselves?

But the work is done for the clergy.

567. But I understood you to say that in addition to the work done for the clergy, other questions arose in a bishop's public office; a good many questions not strictly connected with the clergy?

Yes.

568. If that is so, does it not seem inconsequential there that the secretary should be remunerated by a salary raised from other sources?

No; not if the salary is not too great. Take the diocese of London for instance, where the work is certainly not light by any means; the duties are heavy. The gross income of the office of bishop's secretary is not above 500 *l.* a year, derived from a variety of fees for actual work done.

569. I was not asking you witth regard to the amount of the salary, but with regard to the incidence of payment?

I understand that all the fees to be received for secretarial work are to go into the fund, and then to come out in the shape of a salary, which is very much the same thing, is it not?

570. Yes; but then, as I understand you, the secretary exists for the comfort of the bishop; it is necessary for his comfort that he should be able to choose his own secretary. Now if the secretary's relations with the bishop are so close as you have described, does it not appear right that the bishop should defray, at all events, a portion of his salary, rather than leave it them to be obtained from other sources?

I have not considered that.

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571. *Chairman.*] May I ask whether it is in your cognizance that the Bishop of London has a private secretary, quite independent of his public legal secretary?

He has a chaplain.

572. Who is his secretary?

Yes, for private purposes.

573. Was that the case with his predecessor also?

Yes.

574. And is it the case with the Archbishop of Canterbury?

Yes.

575. Also the phrase "Bishop's secretary" can hardly answer to an officer who lives in London as secretary to a Bishop of Durham; I presume he can hardly be his private secretary?

No, it is for public official work that he is his secretary.

576. Therefore it is important to draw a marked distinction between a private secretary and a legal secretary, such as the Act of Parliament have recognized as attached to each see?

Yes; the remuneration which is received is for public work, and not more than is a proper remuneration for the official work done.

577. Bishop of *Ely.*] If under clause 13 more than one person should be appointed to the joint office of registrar and secretary, do you think that the remuneration provided by the Bill would be adequate to secure the services of the two men?

No, I think the clause is useless on that account, that if you appoint two officers it would be quite impossible to divide the income assigned for the joint office of secretary and registrar. I should think it insufficient as it is; and if you are to give half of that to one officer, and half to the other, it would leave a very insufficient sum for each.

578. And the result of that would be, that you would not get either office well filled?

I think so. I do not think the clause would be workable without some crease of salary to meet the case of a double appointment.

579. Lord *Stafford.*] In consecration of churches does the bishop's legal secretary receive any fee?

A fee of a guinea, I think.

580. And do the Ecclesiastical Commissioners levy a fee at the consecration of a new church?

No. The expense at the Commission is in the conveyance of the site that is the only thing that the Ecclesiastical Commissioners are mixed up in. The site is conveyed to them, and their solicitors, as a rule, receive the remuneration.

581. Does the patron pay their solicitors for the conveyance?

Yes.

582. And a small fee, you say, to the bishop's legal secretary?

Yes; but that is not on the conveyance.

583. Are there any other fees which are paid to the Ecclesiastical Commissioners on the consecration of a church, excepting those which you have mentioned already?

Yes, those of the registrar; the consecration is in the department of the registrar.

584. What fee does he receive?

I do not know; but it is all prescribed under the Order in Council.

The Witness is directed to withdraw.

MR. SIMON DUNNING is called in; and Examined, as follows:

585. *Chairman.*] You have filled the office of bishop's secretary for a long time, having been secretary to the Bishop of Rochester, and to the late Archbishop of Canterbury?

Yes; and to other bishops.

586. And therefore of course you are perfectly conversant with all the details, and know the difficulties of any change in the matter?

Yes.

587. Does any particular point strike you as to this Bill?

First it appears to me that there is not a sufficient distinction made between the marriage license fees and the purely ecclesiastical fees, that the two are mixed up together. The marriage license fees are very liable to be abolished or to be very much reduced, and then the scheme of the Bill will crumble to pieces; that is, if the marriage license fees amount to what I understand they do, namely, to perhaps more than one-third of the whole; I have no sufficient data as regards that. That is one point.

588. Mr. Lee rather thought that the marriage license fees were the most stable part of the whole, but you do not agree with him?

No; I should rather doubt, after the recommendations of the Royal Commismion, whether they are stable.

589. Would you mention any other point that strikes you?

I will go through the Bill, if your Grace will allow me. In regard to clause 12, I have a strong opinion that the office of registrar should be held during good behaviour, not at the will of the bishop. The officer will be, to a great extent, the officer of the diocese. The bishop's secretary at present, although he is called the bishop's secretary, is not paid by the bishop; he is paid by the fees of the clergy, and he is at their beck and call in giving them advice. I think it is a great hardship where a man, who is in the position and may have held the office for a few years, when the bishop dies or is removed, loses his place. I say that in addition to the argument used by Mr. Monk as regards the transfer of the records.

590. I suppose you would say that the argument is in favour of the registrar being for life, and of the secretary being removable?

Yes, possibly so.

591. But that when you come to unite them it is a question which is to prevail?

Yes.

592. And on the whole you think that he ought to hold it during good behaviour?

Yes, as all other offices of a similar character are held.

593. Viscount *Halifax.*] Are there no confidential duties performed by the secretary of a bishop towards the bishop, which would render it desirable that he should be removable by the bishop at his pleasure?

I am not aware that there is anything private as regards the bishop; they are all duties connected with the clergy, and the work of the diocese, advising the bishop on the legal matters of the diocese, cases of the clergy, and carrying out Acts of Parliament, and such like work.

594. You see no objection arising from the relation between the secretary and the bishop to his being continued during good behaviour?

No, I think he ought to be continued during good behaviour.

595. *Chairman.*] It has been stated with regard to the offices of registrar which at present exist, that the duties of that office may be performed by a person very advanced in life, who, in fact, does every thing by his clerks; but that it would be very inconvenient to have as secretary a person who was worn out, and who did duties, which are no longer routine duties, merely by his clerks?

Then, I think, you ought to make some provision for a retiring pension.

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596. These are two very important points; does any other point strike you? It has been suggested as regards section 20 (I am merely giving the opinion of registrars in the country) that the registrar should be empowered to administer oaths as well as the surrogates; I have nothing whatever to do with it myself. Then as regards the stamps, I think that the clergy in country districts will have very great difficulty in obtaining these stamps; as to the stamps themselves, or the payment by means of stamps, for myself I should not have any great objection; but I should have a great objection to be the stamp distributor; let the persons requiring stamps go to the Revenue Office, or somewhere else to get them; the duty ought not to be imposed on the registrar; I think it would be an excessive hardship. The objection to stamps is, that the clergymen in the country districts may have a difficulty in getting the stamps, whereas they can send the officer a cheque for the fee.

597. Lord *Halifax.*] Are you aware of the reason for the distinction of postage stamps being issued by the Post Office, and receipt stamps by the Inland Revenue, namely, to keep the different sources of income totally distinct?

No, I was not aware of that.

598. Supposing that to be so, which it is, do you not think there would be a great objection in the stamps being issued by the Inland Revenue, the receipts from which would not go into the revenue to which they are chargeable?

This could be met by a separate account being kept. The stamps used in the Court of Chancery are not issued by the Court of Chancery, but, I believe, by the Inland Revenue.

599. By whom are they issued?

They are obtained from the law stationers, who buy them from the Inland Revenue Office. If my clerk has to pay for a document in the Court of Chancery, he does not obtain the stamp from the officer of the Court, but purchases it at a law stationer's.

600. By whom are these stamps issued to the law stationers?

By the Inland Revenue Office, I presume; the stationers, I believe, get some sort of remuneration for distributing them, for selling them. In this case the Ecclesiastical Commissioners, I presume, would not undertake the issue of the stamps.

601 There would be some separate account kept of them by the department that issued them?

Yes.

602. *Chairman.*] But your opinion is that there is no object in having the stamps?

No, I do not see any object in having them.

603. Perhaps you would have objected to them in the law courts also, if you had been consulted?

It gives additional trouble; but there is a greater ramification in the law courts, and it may be necessary for protection.

604. You are aware, of course, that there are fees extending through all the dioceses, and there are 27 dioceses, and at least three officers in each who receive fees; and that, therefore, three times 27 makes a considerable ramification, even in this case?

Yes. I do not see any objection to carrying it out, provided you do not impose upon the Ecclesiastical Commissioners the duty of providing the stamps, or on the registrars the duty of distributing them; in fact, the payment by stamps would be an easy way of getting the money; there would be no difficulty then, no squabbling with the clergy about fees or anything of the kind. I think also you will find a difficulty in uniting the offices of secretary and registrar in a great many cases. I will instance the diocese of Winchester, with which I was connected up to the time of the death of Bishop Wilberforce. There are two registries for the diocese, one in Doctors' Commons, for the county of Surrey, and one at Winchester, for the county of Hampshire, and the bishop lives at Farnham. Where is the registrar and secretary to be? He must have two or three offices, and he himself ought possibly to be at Farnham.

605. Viscount

605. Viscount *Halifax*.] Is the same the case in other dioceses which extend beyond one county?
In the case of Gloucester and Bristol there are two registries.

606. But then they are two bishoprics united?
Yes; and I believe it was arranged at the time of the passing of the Act of Parliament, when Dorsetshire was added to Salisbury, and the Bishopric of Gloucester and Bristol was created, that there were to be two cathedral establishments.

607. Take the Bishopric of Oxford, comprising the counties of Berks, Buckingham, and Oxford, do you apprehend that there are three registries?
No, only one.

608. *Chairman*.] You are secretary to a number of bishops, are you not?
No, not many now.

609. Have they local secretaries besides, most of them?
Yes. Then as regards the remuneration, the scale of remuneration appears to be taken on the receipts of the registrar. Now, if you make the registrar also the secretary, and moreover, add to him the duties of the registrar of the archdeacons, it strikes me that the remuneration is not sufficient.

610. Viscount *Halifax*.] Is it not usual for the bishops to have a local secretary and also one in London?
It is.

611. *Lord Steward*.] Do you see any difficulty in superadding the duties of the registrar of the archdeacons to those of the registrar of the diocese?
Provided that it is sufficiently paid, I do not see any.

612. But you do not think the scale of remuneration is sufficient?
No; and if the marriage license fees are lost, the Bill collapses, because you add 3,000 *l.* a year for the judge. The salaries alone will amount to 31,800 *l.*, by the table, without the incidental expenses. Then I quite think that, as regards the remuneration of the existing officers, you should strike out all reference to that Act of Parliament of Will. 4, that all ought to be treated alike.

613. *Chairman*.] That too long a time has gone on for you to make any difference?
Yes.

614. *Lord Steward*.] I should like to ask your opinion about Clause 50 and the following clauses, about the duties imposed upon the Ecclesiastical Commissioners. Do you know whether there is any machinery for carrying that part of the Bill out?
Not that I know of.

615. Is there any reason for entrusting those duties to the Ecclesiastical Commissioners?
I think that if you entrust them to a public body they are possibly the best.

616. Is there not this objection, that they at the present moment have funds which are impressed with a trust, and if the fees anticipated by the Bill fall short, they will have to make good the amount required out of funds which are now impressed with a trust?
You give them power to lend monies.

617. But those funds are now impressed with a public trust for the relief of spiritual destitution?
That would be the case with almost any similar public body. If you tried Queen Anne's Bounty, for instance; their funds are more impressed with a trust than those of the Ecclesiastical Commissioners. It was suggested at a meeting presided over by Dr. Deane, that a separate body should be created, consisting of some of his Grace's officers, the vicar general, and others, but I do not think it met with very much favour. I think the general feeling of the meeting was that the Ecclesiastical Commissioners, if you want a body, are the best.

618. Let me put before you this. If the marriage license fees, amounting to a sum variously estimated at from 39,600 *l.* down to 20,000 *l.* are reduced

Mr. *Dunning.*
20th March 1876.

or abolished, the demand upon the funds impressed with a trust for the relief of spiritual destitution will be very largely increased under this Bill?
It might be met by making it optional with the Ecclesiastical Commissioners whether they will advance any money or not?

619. Is that provided for in the Bill?
No; it says, "The Ecclesiastical Commissioners for England shall from time to time advance from their common fund to the Ecclesiastical Fees Fund such sums as may be necessary to provide," and so on. It appears to be compulsory.

620. Under this Bill, therefore, it is compulsory upon the Ecclesiastical Commissioners, out of their funds for the relief of spiritual destitution, to pay the compensation and other charges provided for by this Bill?
Yes.

621. *Chairman.*] Are there any other points which you desire to mention?
By section 52, the remuneration to the existing officers is liable to fluctuation, inasmuch as the salary of the judge and the judge's clerk is brought into the account. I think they should be protected as much as possible.

622. *Lord Steward.*] You mean that the compensation should be a first charge upon the fee fund before the salaries newly created?
Yes; the existing officers should be protected in the first instance before the salaries to the new officers are provided for. Then, I think, as regards section 41, there is a suggestion to be made. That section says, "It shall be lawful to fix graduated scales of fees in respect of cathedral preferments or benefices below the yearly value of 500 *l.*" A very large number of the benefices are below 500 *l.*, and I rather think 300 *l.* would be better, if you have a graduated scale at all; but I agree with Mr. Lee; I do not think that the fees are oppressive; I think that the clergymen are very apt to confound stamp duties with fees. A clergyman complains: "I have had to pay so much for my institution;" and perhaps 20 *l.* of what he pays goes to the revenue for stamps.

623. *Chairman.*] Is there any other point that occurs to you?
No, nothing else occurs to me.

The Witness is directed to withdraw.

MR. ARTHUR JAMES DAY is called in; and Examined, as follows:

Mr. *Day.*

624. *Chairman.*] You are Secretary to the Bishop of Rochester, and London secretary to other bishops?
Yes.

625. You have heard what Mr. Lee and Mr. Dunning have said, and perhaps you would give us your opinion on any point that arises out of their evidence. I would ask you in the first place this: you have put a paper in my hands, from which I gather that you entertain an opinion that it is not undesirable that the offices of bishop's secretary and registrar should be united?
I do.

626. In fact, you do not see any difficulty in the union in such dioceses as those with which you are connected?
As regards the diocese of Rochester, I do see a difficulty, on account of the position of the registry; the registry being at one extreme corner of the diocese, it would be rather difficult for the secretary, if he held also the office of registrar, to conduct his business in the cathedral town at a great distance from the other parts of the diocese.

627. That difficulty is the same as Mr. Lee has already pointed out?
It is.

628. You entertain an opinion, as far as I can gather from this paper, that there ought not to be salaries given to the secretaries and registrars; is that so; that they ought to be paid by fees?

I submit

I submit that there is a way of meeting the difficulty of the question which arises partly under this Bill, without resorting to the plan of putting the secretaries and registrars upon salaries.

629. You do not wish that they should be put upon salaries?
No.

630. You think that they can better be paid by fees?
I think the present system works satisfactorily as a whole.

631. What is your plan?
The plan which I venture to submit is this (perhaps I may be allowed to read what I have written). I do not think it is expedient to continue the system of a separate judge of each diocesan court. By the Public Worship Regulation Act one of the main branches of jurisdiction of these courts has practically passed to the provincial courts.

632. May I ask you a question about that; I do not quite know what you allude to?
The jurisdiction as regards matters of ritual and ornament; those matters which formerly formed part of the jurisdiction of the diocesan court have now passed from the bishop's jurisdiction to the provincial court, as I understand.

633. In the event of their not deciding the cases themselves?
Yes.

634. Suppose they do decide them?
I have assumed that the Public Worship Act was intended as a practical supersession of the jurisdiction of the diocesan courts in those respects.

635. Is there anything on which you ground that?
It is an assumption, I admit, on my own part.

636. Many cases will arise in which the bishops have to decide the matter themselves, will there not?
Yes; I am speaking of the jurisdiction as exercised in their diocesan courts under the chancellors.

637. I do not know whether you were here when Mr. Monk mentioned that there had only been three cases before the Consistorial Court, under the Church Discipline Act, in 40 years?
I was not present; my own knowledge would lead me to the same conclusion.

638. You base upon that, what proposal?
That is the first matter which I wished to mention. In another main branch, the correction of clerks (or church discipline), it is, I believe, almost without exception, the practice of the bishops to send every case by letters of request to the provincial court, which thus, in effect, becomes a court of first instance, the appeal from that court lying to the final court of appeal. I believe that it is considered an advantage thus to avoid the delay and expense of an intermediate appeal from the diocesan to the provincial court. The above being the law and practice respectively with regard to suits against the clergy, or in respect of ritual or ornament, I submit that, for the sake of occasional contentious proceedings on applications for faculties (as to which I have a suggestion to offer presently), and which I believe are almost the only contentious matters which in practice now come before the diocesan courts, it may be considered doubtful whether a staff of judges, whose emoluments amount to between 5,000 *l.* and 6,000 *l.* per annum, should be maintained.

639. You propose, therefore, to sweep away all the chancellors?
To deal with the matter somewhat in this way: that upon every future avoidance of the office of official principal of a diocesan court, the jurisdiction theretofore exercised by such official principal shall be exercised by the judge appointed under the Public Worship Act. That all contentious business shall be transacted in the registry of the provincial court, around which alone, under existing circumstances, can be maintained a body of practitioners versed in ecclesiastical law. Indeed, I am unable to perceive any objection to the immediate transfer to the judge appointed under the Public Worship Act of the whole jurisdiction in contentious matters throughout both provinces. And as under that Act the same judge presides in both provincial courts, it might not

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be considered a violent measure to adopt the suggestion contained in the Report in 1832 of the Commissioners on Ecclesiastical Courts (p. 73), that the contentious jurisdiction shall be exercised in a single court. The establishment of a central Ecclesiastical Court in London would carry with it the important advantages of (1) a single staff of officers, whose remuneration might thus be fixed upon a scale sufficient to attract the services of highly skilled persons, and (2) the vicinity of counsel and practitioners making a specialty of this branch of law. The diocesan registries would be brought into connection with the new court upon the same principle with the district registries of the Court of Probate, and uniform procedure would prevail. This proposal is, I am aware, open to the objection that no provision is made for those cases of contested applications for faculties, the determination of which depends largely upon a knowledge of local circumstances and actual inspection of the Church affected. My suggestion would be, to empower the bishop in such cases to refer the question to a Commission, to be appointed much in the same way as Commissions under the Incumbents Resignation Act, all parties interested being represented upon such Commission. The bishop might, on receiving the return, issue his fiat accordingly; any legal question involved would be referred to the judge previously to the issuing of the Commission. I am aware that it is considered important to preserve to the bishop the advantage of a standing counsel in the person of the diocesan chancellor. I would propose to extend to all cases coming under the bishop's jurisdiction, the power of stating a special case for the opinion of the judge, and also to enable minor legal questions to be heard and disposed of upon summons in camerâ in the same manner as in Chancery and Common Law Courts. And the ancient office of vicar general might, upon the transfer of the contentious jurisdiction, be detached from the office of chancellor (which last would then be suppressed), a proportion of the fees now payable to the chancellor being assigned to the vicar general in consideration of his exercising a general control over the non-contentious business transacted in the Diocesan Registry, and of his acting as the bishop's adviser in cases requiring the opinion of counsel. The residue of the chancellor's fees might be carried to a fund for providing the salary of the Judge Ordinary. It occurs to me that the ordinary jurisdiction of the bishop in relation to the fabric of churches, pews therein, and glebe houses and lands, as regards unopposed applications for faculties, sales, exchanges, leases, and dilapidations, might with advantage be delegated to the archdeacons, some of whom have already (I believe) through their courts, concurrent jurisdiction in the matter of faculties. In this case, of course, there would be a right of appeal to the bishop, and every faculty or other instrument under seal, would issue under the seal of the Diocesan Court. I entertain a very strong opinion in favour of the existing system of payment of registrars and secretaries by fees rather than by fixed salaries. There is not a complete parallel between the duties of a diocesan registrar and secretary, and those of the registrars of the Temporal Courts. In the latter case, the business of the registry is transacted by the personal attendance (in all but exceptional cases) of legal practitioners representing the parties interested. Advice is not given, and correspondence is not resorted to, and no obligation on the part of the officer is recognised, other than to deal with the matter in strict accordance with the application made to him. With the diocesan officers, the matter is entirely different, they are at once (whilst receiving the official fee only), the professional advisers of the clergy, &c., and the officers by whom the business is transacted. Neither a clergyman nor layman (as a rule) employs any professional assistance in dealing with the bishop's officers, and the business is in a great measure conducted by the more laborious method of correspondence. The remuneration of the officer depends (not indeed, strictly, upon the amount of work done by him, for a great deal of trouble sometimes attaches to a matter in respect of which there is either no fee or a merely nominal one), but speaking generally upon the number of cases which come before him, and which upon the average represent the extent to which his time is occupied. I doubt if the effect of assigning in the place of this variable income a fixed salary payable out of a fee fund, and of taking away from the officer all personal interest in the fees received through, but no longer by, him, will not be to induce future officers to regard the clergy and other applicants rather as strangers, to be dealt with officially, than (as at present) in the light of clients in respect of the fee; and the knowledge

that

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that the officer is accountable to the fund for every fee incurred, whether received or not, will render necessary, demand of the prepayment which, following upon a less strict system, may be considered irksome. I believe that if the offices of registrar and secretary are reunited, and the officer holding the appointment is constituted the sole diocesan officer, it will be found that upon the footing of his annual returns, reductions of fees may in some cases be made without unduly reducing his average income. I entirely concur in the proposal contained in the Bill for abolishing the freehold tenure of the office of diocesan registrar, and providing that future appointments should be during pleasure only, and for uniting with that office the appointment of secretary, so that each bishop might have the right of selecting his own diocesan officer, who ought to stand in a confidential relation to him. I should prefer to unite the offices of diocesan registrar and bishop's secretary, rather than to suppress the latter title, which implies duties and responsibilities to the bishop and clergy apart from the business of the Diocesan Court. The above observations do not apply to the office of provincial registrar; his functions being, according to my suggestion, confined to contentious business. The adoption of the principle of the above suggestions would involve very considerable modifications in the Bill which, so far as its financial aspect is concerned, would become simply a measure for apportioning the fees now payable to the Ecclesiastical Judges, between the Judge Ordinary or Judge of the Provincial Courts, and the Diocesan Vicars General. And as regards the other offices the effect would be to provide—(1.) A principal registry, with a registrar appointed during good behaviour, for the transaction of contentious business; (2.) A diocesan registrar, appointed during pleasure for the transaction of non-contentious business in each arch-diocese and diocese in England, such registrar to be *ex officio* secretary to the bishop; all duties connected with suppressed offices to be assigned, according to their contentious or non-contentious nature, to the above officers, and all fees now payable in respect of such duties to be paid to the persons by whom they will be discharged. It will then very soon appear what reductions or remissions of existing fees, under the authority of existing Acts, are compatible with efficiency. Provision would of course have to be made for the salary of the Judge Ordinary during the tenure of office of the existing chancellors. This might, I submit, be effected by a temporary charge upon the income of the diocesan registrars; the suggested remission of fees being in the meantime suspended.

The Witness is directed to withdraw.

Ordered, That the Committee be adjourned to Wednesday next, Twelve o'clock.

# *Die Mercurii, 22° Martii,* 1876.

PRESENT:

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|---|---|
| Lord Archbishop of CANTERBURY. | Viscount HALIFAX. |
| LORD STEWARD. | Lord Bishop of GLOUCESTER and BRISTOL. |
| Earl of SHAFTESBURY. | Lord Bishop of ELY. |
| Earl STANHOPE. | Lord STRAFFORD. |
| Earl of POWIS. | Lord HATHERLEY. |
| Earl NELSON. | Lord WINMARLEIGH. |

THE LORD ARCHBISHOP OF CANTERBURY, IN THE CHAIR.

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Mr. JAMES PARKER DEANE, D.C.L., Q.C., is called in; and Examined, as follows:

640. *Chairman.*] You are Vicar General of the Province of Canterbury?
Yes.

Mr. *Deane*, D.C.L., Q.C.

32nd March 1876.

641. Am I right in informing the Committee that the Archbishop of Canterbury's jurisdiction may be divided into four different sections, that which has to do with the Faculties, that which has to do with the Arches Court, that which has to do with the Vicar General's Office, and that which has to do with the Commissary of the Diocese of Canterbury?
Yes; distinguishing your Grace's jurisdiction as Archbishop of Canterbury, from that which your Grace has as Diocesan of Canterbury.

642. And also perhaps distinguishing that which I have as Archbishop of Canterbury from that which I have as Metropolitan?
Yes.

643. How do you understand the phrase in the Act of Uniformity, "The Metropolitan of these Realms"?
That, I think, would be rather a matter of history, as giving your Grace the position of Primate of all England, as distinguished from the title of the Archbishop of York, "Primate of England;" I have not at all prepared myself upon that point, but if I mistake not that is the answer to the question.

644. The Faculty Office has to do with the whole of England; with both Provinces?
Yes, with both Provinces.

645. The Archbishop of Canterbury, in right of some office that he holds, issues faculties from the Faculty Office for both Provinces?
Quite so.

646 Special licenses for marriage?
Yes.

647. And also dispensations as to livings, in certain cases?
Yes.

 648. Therefore

Mr. *Deane*, D.C.L., Q.C.

22nd March 1876.

648. Therefore there is some sense in which the Archbishop of Canterbury's jurisdiction runs over the whole of England; over both provinces?
Yes; and I believe in another sense from that which your Grace has referred to, in the appointment of notaries public; that jurisdiction I think, from cases in which I have been engaged, extends beyond England, because I remember some cases at Melbourne which were tried before Dr. Lushington when he was Master of the Faculties.

649. In each of these capacities the Archbishop of Canterbury has a judge and a registrar?
Yes.

650. The Master of the Faculties in one capacity, with the Registrar of the Faculties as his assistant; the Dean of the Arches in the second capacity, with the Registrar of the Arches as his assistant; the Vicar General in the third capacity, with the Registrar of the Province as his assistant; the Commissary of Canterbury in the fourth capacity, with the Registrar as his assistant?
Quite so.

651. That is the account of the officers whom the archbishop has in virtue of his jurisdiction?
Quite so.

652. Leaving all the others at present, we will go to the office which you hold; has the vicar general any judicial office?
I think not directly; the only judicial capacity that I am aware of is indirect, when your Grace calls him in as your assessor.

653. May I remind you of the case of the confirmation of bishops of the Southern Province?
That I had forgotten. There he sits, so far, in a judicial capacity.

654. The vicar general sits then in Court, in the confirmation of bishops of the Southern Province?
Yes; I had forgotten that at first.

655. Do you think the archbishop would be entitled to sit in person in such cases; perhaps you have not given attention to that question?
I have not considered that at all.

656. As a matter of fact the vicar general always sits as a judge in the confirmation of bishops?
Always.

657. In your experience, has that been an important judicial office; in the case, for example, of Dr. Hampden; you remember, perhaps, that case?
Yes. Your Grace is aware of the observations which have been made in many places with respect to the confirmation of bishops, particularly arising out of Dr. Hampden's case, and a more recent case, namely, Dr. Temple's case. If I must give your Grace an answer to the question, I do not think it is at all an important matter, having regard to the way in which the proceedings are conducted; I mean calling upon persons to appear and then when they appear not hearing them. I only repeat to your Grace what I have said elsewhere, and said when I attended that Court, in the case of Dr. Temple, that it is a thing which would be well dispensed with.

658. Were you counsel in that case?
I was counsel against Dr. Temple, and I then had to consider the matter; and I confess I thought, if I may use the expression, that it was rather a sham.

659. Then you formed the opinion, that it would be very difficult to bring forward objections at a confirmation which would really require the attention of a judge, did you?
The judge, I think it has been decided, would not be able to listen to them.

660. To any objections?
To any objections.

661. Even supposing that they alleged something clearly against the ecclesiastical law?
I think that that was the decision upon the case.

662. However,

662. However, such as it is, the vicar general sits in court as judge in these cases?
Yes.

663. You mentioned, also, that he sits as judge in certain other cases, as the assessor of the archbishop?
I do not know that he would have any claim to do so, or that your Grace would necessarily think that it would be slighting him if you did not call him in; but I imagine it is more convenient to your Grace, and to those who occupy your Grace's position, having an officer of that kind to call him in instead of anybody else. I think Archbishop Sumner in one case called in other gentlemen as assessors.

664. He was assisted in one case by Lord Wensleydale, but that was the case of an appeal from All Souls to him as visitor?
Yes; but I rather think there was a case which was especially before him as archbishop, and not as visitor, in which Archbishop Sumner was assisted by somebody. I think in one case by Lord Chelmsford.

665. Lord Chelmsford, I think, assisted the Archbishop of York in one case?
Yes, I think so in one case.

666. These cases are cases which arise generally under Statute?
Yes, I think so.

667. Being appeals by curates, for example, who have been removed from their office by the bishop of the diocese, and who by Statute appear to have an appeal to the Archbishop of the Province?
The case in which the Archbishop of York sat, having as his assessor Lord Chelmsford, was an appeal of a curate. That was an appeal from Manchester. Dr. Lee was the bishop in that case.

668. In all these cases the vicar general rather sits as the legal adviser of the bishop?
I think he sits in that capacity.

669. In fact, besides his judicial capacity, whatever that is, the Vicar General is the legal adviser of the archbishop?
I have always so considered, and have acted accordingly.

670. The matters which the archbishop seeks legal advice upon are of course of a very varied character?
It is hardly possible to limit them, because, as your Grace is aware, they extend to the colonies, and they extend to places which are not strictly colonies, including, for instance, such jurisdiction as the Bishop of Gibraltar has. Of course they extend throughout the Province, but they also extend to foreign cases. India may be called a colony (I am not quite certain about that); but cases in the East Indies are included, for instance, with respect to the jurisdiction of the three Bishops of Calcutta, Bombay, and Madras, as to which there have been questions.

671. It is customary for the archbishop to consecrate, under a Royal license, bishops for all parts of the world?
Yes.

672. And, therefore, legal difficulties may arise in regard to all these matters?
There are questions arising very frequently in which your Grace and the Colonial Office are concerned, and those are cases in which legal advice is frequently asked for.

673. And others in which the India Board are concerned?
Yes, and the India Board also.

674. And others in which the Foreign Office would be concerned with respect to bishops in countries not under Her Majesty's dominion?
Yes.

Mr. *Deane*, D.C.L., Q.C.

22nd March 1876.

675. The questions, then, on which the vicar general is called upon to advise are of a very complicated and varied nature?
Yes, I should say so.

676. And of course also he is the legal adviser of the archbishop in all domestic matters?
Yes; I should consider that he was bound to answer any question which the archbishop would put to him.

677. Besides these duties, do you consider that the vicar general has any office in reference to marriages?
That is frequently a very difficult duty which he has to discharge, because the number of licenses which come through the vicar general's office, being considerably out of proportion to the licenses which are granted out of any other office, difficulties frequently arise in that office, and I have known many cases, at least several cases, in which, when the matter has been referred to me, I have thought it right to refuse the license. Those are questions arising out of residence, and bigamy, and various questions of that sort. This work of course is done by the registrar, but I am told that scarcely a day passes in which there are not questions of that sort arising, but from the great experience of the present registrar, he disposes of most of them without coming to me.

678. Do you consider that in your official capacity you are responsible for the issuing of such licenses?
Certainly. If I refused a license without having good legal ground for refusing it, I should consider that I should be responsible, and should be amenable to an action.

679. Would you be responsible for the acts of the registrar?
I think so.

680. So that the office of the vicar general in reference to marriage licenses is a most important one?
I so consider it myself.

681. And affects a very large portion of Her Majesty's subjects?
If your Grace thought it worth while, I could state the proportion, for I have it here; but I think, stating it roughly, that a third of the marriage licenses of England are issued out of the three London offices, and I think again something very nearly approaching a half of the London licenses come from the vicar general's office.

682. So that you would hold that it was quite an inaccurate account of the matter to say that the issuing of marriage licenses was a merely formal proceeding?
I cannot give your Grace a better illustration of my answer that it is not a formal proceeding, than what occurred quite recently (your Grace will excuse my not mentioning names; I will mention them to your Grace privately, if it be necessary) in which a clergyman of very considerable standing in London brought a lady to the vicar general's office for the purpose of obtaining a marriage license that she should be married in his church to a foreigner, and so unaware was he of what the Statute requires, that the foreigner had not been in England at the time, and the lady herself had never resided within the district of the church in which it was proposed to have the marriage. That license was stopped. That was a clergyman of considerable position in London, and the lady was a person of some distinction also; and, of course, if such an amount of ignorance is to be found there, one may expect that in other classes it is much greater.

683. Then you would not be of opinion that the charge of fees for marriage licenses is merely a convenient mode of raising a fund to go to various officers who have no responsible duties?
Certainly not, and I have a very strong opinion with respect to the fees on mariage licenses arising out of this Bill. If your Grace will allow me to state what that is now, it may be a convenient opportunity for me to do so.

684. If you please?
I think it would be very desirable in any Bill, with respect to fees, that marriage licenses, that is Ecclesiastical marriage licenses, so to call them, should be

be all put upon exactly the same scale of fee. The scale of fee adopted in London is 2*l.* 12*s.* 6*d.*; that amount is adopted in compliance with a Statute of the 19 & 20 Vict., which gives that as the statutory fee which the civil registrars are allowed to charge for a marriage license, and I have never been able since I have seen this Bill to understand why the issuers of ecclesiastical licenses should be called upon to charge less than the civil officers who issue exactly the same documents in their registries. I do not think, however, that they ought to charge more, which in the country they do.

685. What clause in the Bill do you refer to?

I am referring, not to a clause in the Ecclesiastical Offices and Fees Bill, but to a clause in the 19 & 20 Vict. c. 119. It is Section 10 which fixes the charge which the civil registrars are to make for a marriage license; it is 30*s.* for the officers, and 12*s.* 6*d* for the stamp. I have a very strong opinion that if it could be done in this Bill, which I think it might be, all ecclesiastical licenses throughout the country should be put at 2*l.* 12*s.* 6*d.*

686. In every diocese?

Yes, in every diocese.

687. Have you any knowledge of what they are at present in other places?

It is impossible to give your Grace any answer to that question. From the inquiries I have made, I find that they vary in almost every diocese, and they vary particularly in this way, which is provided for, to some extent, in this Bill, that the surrogates make different charges; and there is a different charge where the license issues directly out of the registry and where it issues through a surrogate.

688. Is the sum you mentioned, namely, 2 *l.* 12 *s.* 6 *d.*, the sum now charged in London?

In the three London offices it is.

689. In London and in the provincial registry of Canterbury?

Yes, in London; in the Vicar General's Office and in the Faculty Office. What is charged in your Grace's diocese I do not know.

690. You mean in Canterbury itself?

Yes. May I make one observation here upon a clause in the Bill. It is proposed in the Bill that the London registrars should charge 2 *s.* 6 *d.*, and that the registrars in other dioceses should charge 5 *s.* I see no reason for that; and on this ground, the London diocese is next to, for instance, the diocese of Rochester, and I do not see why a person living at Dartford, which is in the diocese of Rochester, should always charge 5*s.* because he is a surrogate of the Chancellor of Rochester, while a person living in the next parish, which is in the diocese of London, charges 2 *s.* 6 *d.* If there is any difference to be made, I think it might be hard upon the surrogates to take the money from them when they have accepted their office, and paid, I know not what, but some fee upon being appointed, and I would rather submit for your Grace's consideration, and that of the Committee, that any deduction which is made should be made so far out of the payment made to the registrar and the chancellor.

691. You are referring to the 36th Clause in the Bill, are you not; "It shall be lawful for surrogates to charge the sum of 5 *s.*, and no more, for every marriage license granted through them, provided that the surrogates appointed by the Master of the Faculties to the Archbishop of Canterbury and by the vicar general of and official principal of the Archbishop of and Province of Canterbury, and by the Chancellor of the diocese of London, or by any of them, shall charge the sum of 2 *s.* 6 *d.*, and no more, for every license granted to them"?

That is the clause I refer to.

692. You think that the fees charged in London and in Canterbury ought to be the same as in other dioceses?

Yes, I would rather put it the other way.

693. You would bring them all down to 2 *s.* 6 *d.*?

I would rather bring them all down to 2 *s.* 6 *d.*

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694. Two shillings and sixpence being the present charge in London and Canterbury?

Two shillings and sixpence is the present charge in London: I do not know anything about Canterbury.

695. I mean by Canterbury the Faculty Office and the Registry Office?

Yes, I am taking London as being these three offices, the Faculty Office, the Vicar General's Office, and the Office of the Diocese of London.

696. There the charge is now 2*s.* 6*d.*?

Yes

697. And you think it would be well, if possible, to bring the surrogates' charges in the country to the same amount?

I cannot see any reason for the distinction; that would be part of the scheme which I would suggest to the Committee for putting all ecclesiastical marriage licenses on the same scale.

698. Perhaps you will explain, a little more fully, what your plan is for putting them all on the same scale?

The stamp duty would remain the same, of course, namely, 12*s.* 6*d.*; and the 30*s.* might be divided between the several officers in such a proportion as either this Bill might provide for under the rules and orders, or as might be provided for under the previous Acts which are proposed to be repealed by this Bill, and in which fees have been settled.

699. It is not unusually said that the payment of the marriage license fee, finding its way to the chancellor, finds its way to a person who has no responsibilities or duties connected with marriage; is that the case?

I think not, for the reasons which I stated to your Grace just now.

700. You consider that the chancellors of the various dioceses have the same duties and responsibilities, with regard to marriage licenses, as you have as Vicar General of the province?

I cannot understand, what I know is the opinion of some chancellors, that they have no duties to discharge in connection with marriage licenses, because I cannot understand a man having his seal affixed without undertaking responsibilities whenever the seal is affixed; it seems to me to be a mistaken view altogether.

701. Supposing that any illegality or impropriety took place in issuing a marriage license, who would be responsible for the fault?

Certainly, if it happened in your Grace's office, the vicar generals; I should consider myself responsible.

702. In like manner, in the dioceses, you would consider the chancellors responsible?

If it occurred in Salisbury, where I happen to be chancellor, I should consider myself responsible, and I have told my registrar there that he ought to take great care in the issuing of those licenses.

703. You are Chancellor of Salisbury?

Yes.

704. And of any other diocese?

No, not of any other diocese.

705. Is there any other matter, with reference to marriage licenses, which you would wish to bring before us?

Upon the general question of fees there are some matters that I should like to state to the Committee.

706. Do you mean fees for marriage licenses?

With regard to the scheme in this Bill generally.

707. We will take that afterwards; I wish to ask you some questions about the other officers of the Archbishop. You may be considered, in one sense, as the principal officer of the Province of Canterbury?

I think so.

708. But,

708. But, in another sense, the Dean of the Arches would be considered the principal officer of the province?
The two offices are divided; the Dean of the Arches has a criminal jurisdiction, which the vicar general has not.

709. The Dean of the Arches in former times had jurisdiction in matters matrimonial, and with reference to wills, had he not?
He never had an original jurisdiction, I think; he had an appellate jurisdiction.

710. When did the separation of those duties take place?
That I am not able to say.

711. I mean to say when was it that the Dean of the Arches ceased to have any authority with respect to wills and in matrimonial causes?
I doubt whether he ever had any; I think that it was always an appellate jurisdiction that he had.

712. Even the appellate jurisdiction has ceased now?
Yes.

713. When did it cease?
The one ceased under the Probate Act, and the other ceased under the Provincial Judge Act.

714. That would be in the year 1857?
In 1857 in the one case, and the year before last, or last year, in the other.

715. What took place the year before last in that matter?
The jurisdiction with respect to marriages was taken away in 1857, and the probate jurisdiction was taken away about the same time, and subsequently the Dean of the Arches, *quâ* the Dean of the Arches, ceased to exist when Sir Robert Phillimore resigned.

716. That is another matter; what I wanted to know was, whether, formerly, he had important duties connected with wills and marriages?
Only an appellate jurisdiction.

717. And that ceased in the year 1857?
That ceased at the time when the Probate and the Marriage and Divorce Acts came into operation.

718. Do you happen to know what the emoluments of the Dean of the Arches were at that time?
I only know from what Sir John Dodson told me; I believe that they amounted to a very small sum indeed; you might almost count it by shillings; I doubt whether they ever amounted to 5 *l.* in the year.

719. Was that when he was judge in matrimonial and probate matters?
Yes; his emoluments were so much per case; I think it was 10 *s.* a case; I know that the fee was infinitesimal altogether; and the way it was eked out was, of course, by making the same person the Judge of the Prerogative Court.

720. The Prerogative Court had to do with the wills?
Yes.

721. That was under the Archbishop of Canterbury at that time?
Yes.

722. The same judge always was Judge of the Prerogative Court of Canterbury and Dean of the Arches?
Yes, almost invariably; in my experience, always.

723. Do you know at all what the emoluments of the judge, who was Judge of the Prerogative Court and of the Arches, were?
The Judge of the Prerogative Court was paid by fees, and I think his income was between 3,000 *l.* and 4,000 *l.* a year.

724. Of course he had a great deal to do?
He had a good deal to do, certainly; the cases were very heavy; they were

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conducted in a different manner from that in which any cases are conducted now, the proceedings being all in writing; they were very laborious.

725. When the duties of the Prerogative Court were transferred elsewhere, the Dean of the Arches was left, you say, with a very small income?

With a very small income indeed; and then it was that Dr. Lushington succeeded Sir John Dodson, who retired on a pension. Dr. Lushington kept the Judgeship of the Admiralty Court, which sustained him, so to speak, as Dean of the Arches; and on Dr. Lushington's retirement, Sir Robert Phillimore, who was Judge of the Admiralty Court, was appointed Dean of the Arches; so that the Dean of the Arches was always supported judicially by some other office which he held of the same character.

726. Are you aware that the office of Master of the Faculties has not uncommonly been held by the Dean of the Arches?

It has frequently been so.

727. It was not held, I think, by Sir Robert Phillimore at first?

No; and I am not quite certain whether it was held by Sir John Dodson; I have an impression that at one time, although he was Dean of the Arches, he had not the Faculties, but I am not quite sure of that.

728. You are aware that under the recent statute the Mastership of the Faculties is united now with the Deanery of the Arches?

Yes, it is so.

729. Do you know at all what the emoluments of the Mastership of the Faculties are?

Only from hearsay; I believe they are 500 *l.* or 600 *l.* a year.

730. Have you any knowledge of what the number of cases that come before the Arches Court is?

No, I cannot answer that question, because they vary so much. When I first came into the profession they were very few, but afterwards they increased very much.

731. I think it has been stated to me, that there are as many as 127 cases in one year of various kinds, formal and informal, coming before the Dean of the Arches; should you think that that was an over-statement?

I should have thought so.

732. The duties of the Dean of the Arches must of course always be difficult?

The cases which come before him, as a rule, are cases which are extremely difficult and involving very considerable responsibility; I mean the church matters.

733. Do you consider that the emoluments of the Faculties, supposing them to be 500 *l.* a year, would be sufficient to secure a good judge to perform all the duties which fall to the Dean of the Arches?

Certainly not.

734. Have you formed any sort of idea as to what salary a person holding so important an office ought to have?

The answer to that question must, with your Grace's permission, depend somewhat upon the meaning of the word important. I have no doubt that a man may discharge in one sense the most important duties for a comparatively small salary, but living as one does in the latter end of the 19th century, I cannot help thinking that if a man is to discharge duties so important in the eyes of the world as those of the Dean of the Arches, his emolument ought to be something which would put him tolerably on an equality with other judges, subject always to this, that he would not have to sit so often as they do, and that his duties would not be so heavy. Whether I am forming my opinion from what I have seen in print, in Bills, or not, I cannot say, but I certainly think that 3,000 *l.* a year would be the minimum.

735. Is it not your opinion that the office might conveniently be held by a judge who was discharging other duties, as Sir Robert Phillimore did, in another court?

That

That is to say, that he should be the Provincial Judge and also the Master of the Faculties.

736. No; but that the Provincial Judge and the Master of the Faculties should be one of the judges of the realm, doing the work of the Arches at odd times when he had nothing else to do?
He being, I suppose, one of Her Majesty's judges.

737. Do you think that it would be possible for that to be satisfactorily carried out?
I have not considered that question. The answer to it would very much depend upon the working of the present Judicature Act; one hardly knows how that may work at present; this is the first experiment of circuits under that system.

738. I have now in my hands the return which I alluded to just now, and I find that it states (I do not know exactly on what authority) that the number of minutes of court and decrees entered during the year 1875 by the Dean of the Arches amounted to 121; does that appear to you excessive?
Unless by minutes of court is meant entries, of which there may be more than one in one and the same proceeding; in that case, I think, it may very likely be so; but my attention was rather by your Grace's question called to the number of cases in which of course there may be a variety of incidents, each incident calling for a separate minute.

739. The sittings of the Court in 1875 are returned to me as only 11, while the minutes of court and decrees entered in that year by the registrar is returned as 121?
That, I think, would be consistent with the idea which I suggested to your Grace, viz.: that the number of cases would be about 11, and that several minutes being made in the same case the number of minutes might be very much more.

740. The number of sittings in 1874 is returned to me as 21, and the number of entries of minutes of court and decrees as 135, and so on during the previous years?
Yes.

741. Sir Robert Phillimore held the office of Judge of the Admiralty Court?
Yes.

742. And was able to perform the duties of Dean of the Arches when he was not occupied in the Admiralty Court?
Yes.

743. But the late Judicature Act, you think, might make some alteration as to the possibility of his attendance?
Yes, I think it possibly may do so; at all events, I think that it would be rash to answer your Grace's question either way as to whether the provincial judge could at the same time be one of Her Majesty's judges, or not?

744. In all probability the duties would be better performed by a man who could give his whole time to them, I suppose?
There must necessarily, from the nature of the subject-matter, be very considerable breaks in the cases which come before the provincial judge, and I do not think that his time would be fully occupied. For instance, if you compare him with a judge who sits on the average, certainly, five days in the week except during the long vacation, I do not think that the provincial judge will ever have to do any work approaching to that.

745. Would it be possible to unite satisfactorily the office of Dean of the Arches with that of vicar general?
Yes; I can see no objection to that.

746. Is not the vicar general the legal adviser of the archbishop out of court, and might there not be an awkwardness in his being also the judge in court?
There would be that objection to it. However, in those matters he might so very easily abstain from advising the Archbishop of Canterbury, that I do not think that would be a practical objection.

 747. Where

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747. Where should you propose that the Archbishop should get legal advice, then?

These matters would be very few, if I am right in this: it would be only in cases arising in your Grace's own diocese that that kind of difficulty would occur, because in the cases which came from other dioceses of course your Grace would not have to interpose at all.

748. As Chancellor of Salisbury, do you hold visitations?

Yes, the bishop's visitations.

749. Do the churchwardens attend at those visitations?

Yes, they are triennial in Salisbury.

750. Are the churchwardens admitted to their office at these visitations?

They are.

751. Do they object to pay the fees?

Almost invariably. "Object" is not the word for it; they do not pay. I can give your Grace an illustration; I cannot take so pointed a one in Salisbury, because I have only been at one visitation in Salisbury myself; but when I was appointed official to the Archdeacon of St. Alban's, which was before the Act affecting the church rates was passed, my income was from 29 *l.* to 30 *l.* a year for that office, and now it is under 3 *l.*; that is for the archdeacon's visitation in the three courts attached to St. Alban's. The diminution results entirely from the churchwardens not paying their fees.

752. The abolition of church rates has made a great difference in that respect?

The abolition, so to speak, and it is practically an abolition of church rates, has made a great difference. The answer always is, "We have no money," and of course, if they have no money for the purpose, one cannot insist upon their paying the fees out of their own pockets.

753. Would it be your opinion that if there is money appropriated to the sustentation of the fabric and the services, it may fairly be charged with these fees?

I think so, and for this reason: that one object of the visitation amongst others, and, perhaps, the most important object as we have always considered, is the sustentation of the fabric, and therefore, considering that the visitation is immediately connected with the sustentation of the fabric, I think money paid towards the sustentation of the fabric should be deemed to be paid towards the visitation, and the fee might fairly be paid out of it.

754. Viscount *Halifax*.] What do you mean by money being "appropriated" towards the sustentation of the fabric?

I understood his Grace's question to be this: whether the visitation fees could be charged upon a sum paid for the sustentation of the fabric.

755. What do you mean by "a sum paid for the sustentation of the fabric." I understood you to say, "appropriated to" the sustentation of the fabric?

I rather followed the words of his Grace when he put the question to me.

756. *Chairman*.] In some parishes there are funds left for the sustentation of the fabric, are there not?

Yes; but what I was bearing in mind was that which is carried out to some extent in Salisbury. Instead of a church-rate there is a collection made at certain services to supply the place of church-rates. Having that practice in my mind, I say that I think that a fund so collected for the purpose of sustaining the fabric, and therefore supplying the place of church-rates, may fairly be considered a sum which is liable to the visitation fee.

757. Viscount *Halifax*.] Do you mean by that, sums collected at the Offertory at the administration of the Sacrament?

No, certainly not; I said, or I meant to say, funds which were collected for the express purpose of sustaining the fabric.

758. In what way?

In the particular case which I am thinking of there are no church-rates collected, but there is a collection made, I think, once a month for the purposes

to

to which church-rates were applied, and therefore those who are willing to pay towards that fund are paying towards the same purposes which a church-rate would be applicable to it if it were collected.

759. Would a churchwarden have a legal right to recover out of such fund the fees which he had paid?
No, I think not.

760. *Chairman.*] You do not consider that it would be illegal in the persons who have the disposal of that fund to pay the churchwarden's fee?
No.

761. Then why should he not have a legal right to recover it?
Because I do not think that he has any legal right except against a church-rate.

762. Then let us suppose a case in which church-rates are collected as they may be at present, every person who objects to pay them withdrawing, and those who choose to pay them paying, would a churchwarden have a legal right to recover his fee out of that church-rate?
I apprehend that he would; but then there is a difficulty in answering your Grace's question about a legal right, because the churchwarden holds the money in his hand.

763. Then you hold that there would be no impropriety, and certainly no illegality, in any churchwarden who has this money in his hands recouping himself for the fees he had paid?
I think there would not.

764. Bishop of *Ely.*] Are not the collections of which you speak very often made under an announcement that they will be for the churchwarden's expenses. I know many cases where it is so, and in that case would the churchwarden's expenses be fairly considered to cover the fee payable at the visitation?
That is the point of view from which I answered the question in the affirmative.

765. The collection being made not *eo nomine* for the repair or sustentation of the church, but for the churchwarden's expenses; in that case he might charge the fee upon the money so collected?
Yes, I particularly wished to keep clear of Lord Halifax's question as to the Offertory.

766. *Chairman.*] Before you proceed upon that point, may I ask you this question: you mentioned that, at Salisbury, there was a distinct collection made for church expenses?
Yes.

767. Is that not made at the time when the offertory sentences are read?
No, it is made at a different service altogether from a service connected with the Communion. It is generally made in the evening. I may say it is always made in the evening at the churches I know. Therefore it is not in any way mixed up, and cannot be confused with the offertory.

768. It cannot be confused with the sacramental alms?
No.

769. Should you consider that the fact of money being collected after the reading of the offertory sentences, put it in an entirely different category from money collected at an evening service?
I have a very strong opinion personally with respect to money collected in the offertory, and I should myself, speaking individually, strongly object to offertory money being applied to such purpose.

770. You would object to its being applied to any purpose, but alms to the poor?
Yes; unless under very special circumstances, which were perfectly well known beforehand to the congregation.

771. Take the sustentation of a curate, for example?
I should hesitate very much as to whether money collected during the read-

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ing of the offertory sentences could be applied to anything but what the Prayer Book directs.

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772. Or the adornment of the church?
I am speaking individually. If a case were brought before me to advise upon, I should feel very great doubt in saying that that was legal.

773. Then I am not wrong in thinking that your objection to these funds being appropriated to the payment of the churchwardens' fees, is the same objection which you feel to their being appropriated to the sustentation of a curate, or the adornment of a church?
Yes.

774. That is an individual opinion of your own?
Quite so.

775. Bishop of *Ely*.] Does not the Rubric specify that moneys collected at an offertory may be applied to "pious and charitable uses"?
Yes.

776. What do you suppose "pious uses" to mean?
I think that is limited by the context; it must mean for charitable uses in the narrow sense of the word "charitable."

777. That would give no particular force to the word "pious"?
It would not; I would not distinguish the two words in that case.

778. *Chairman*.] At all events we understand that in the case of a collection distinctly for the payment of the necessary church expenses, and made at another service, you would not object to the fee being paid out of that?
No.

779. And also in the event of a church-rate being levied, though imperfectly levied, under the new law, because any man may refuse to pay it, you would not object to the money so raised being appropriated to the payment of the fees?
No.

780. Can you then account for the extreme objection which churchwardens have to pay fees if they can recoup themselves in this way?
Yes; because in many parishes neither proceeding is had recourse to. There are no church-rates attempted to be levied, and there is no collection made for these purposes.

781. You do not think that a desirable state of things in any parish that there should be no fund whatever for these purposes?
No, certainly not; I constantly see the mischief of it.

782. And probably you think that it would be desirable that the attention of churchwardens and others should be directed to the necessity of providing such a fund in every parish?
So much do I think that, that where I have had any influence from the position I hold I have endeavoured to introduce it.

783. And out of that fund you see no objection to the payment of churchwardens' fees?
No.

784. On the ground that they are necessary for the supervision of the fabric, with a view to its being kept in good order?
Quite so.

785. You think therefore that these fees are not a mere convenient mode of raising money to pay persons who have nothing to do with the object for which the fees are collected, but that they are payments for duties discharged?
I should say so.

786. That is not the general view about the fees as it exists in the country, is it?
I think that the general view is very much confused in consequence of what used to be the old practice, which was that when sums of money were collected by church-rates, a great part of that money was spent in churchwardens' dinners,

dinners, and things of that kind. I think that the state of things, and, if I may say so, the state of feeling also is very much altered in the country, although a haze remains with respect to the former practices.

787. It has been argued before us by more than one witness, that it is very desirable to do away with the churchwardens' payment altogether; does that appear to you to be reasonable?

The way in which I would answer that question would be this: if there is to be a visitation, some expense must be incurred in giving notice of the visitation, and in recording the admission of the churchwardens and their presentments, and so forth, and I do not see how that can very well be paid for, at all events so equitably be paid for, as by a payment from each parish which is visited. Assuming that the visitation is for the benefit of the parish, I think that those who receive the benefit should bear the burden.

788. It professes to be one of the objects of this Bill to remit fees, should you think that it was desirable to begin by remitting churchwardens' fees?

The churchwardens' fees are diminished by this Bill from, I think, 18 *s.* or 18 *s.* 6 *d.* to 5 *s.* From my own experience I think it will be as difficult to get the 5 *s.* as it has been to get the 18 *s.* Speaking practically the objection is not to the amount, but the objection is to the payment altogether.

789. I do not know whether you quite understood what I meant, the object of this Bill is to collect a large fund, to reduce the payments to officers, and therefore to leave a surplus which may be spent in the reduction of fees. When that surplus has been gained, we must begin to reduce someone's fees, does it seem to you right that the churchwardens should be the first persons to benefit by this reduction, or would you think it better that the poor clergy should be relieved first?

Of the two I should say it would be better that the poor clergy should be relieved; but I have a difficulty there, which I will state frankly to your Grace. With the exception of first-fruits and tenths I am not aware what are those extraordinary expenses to which the clergy are put.

790. You hold that the clergy do not pay any large proportion of these fees?

I have taken some trouble to inform myself upon that subject, and I know of no fees which the clergy pay except their fees for induction, institution, and so forth, and those fees, taking the averages of benefices throughout England at 250 *l.* a year, will I think be found to be less than any other professional man pays even to the Government in the shape of stamps when he enters upon his profession without getting a freehold. For instance, in my own profession, the first thing one has to do is to pay Her Majesty's Government 50 *l.* for a stamp upon the chance of getting any business by and by; on the other hand, the clergyman gets a living of, we will say, 250 *l.* a year and a house, and he pays something under 9 *l.* or 10 *l.* I think that is the amount.

791. You are aware that, on the recommendation of the Archbishop of Canterbury, those fees payable to the Government were re-arranged a few years ago?

Yes.

792. And much more equitably assessed than formerly?

Yes.

793. The poor livings are not charged as they used to be, but it is a graduated scale which the Archbishop of Canterbury recommended to Her Majesty's Government, and which the then Prime Minister and the Chancellor of the Exchequer accepted?

Yes.

794. And you do not think that as now collected, those fees are oppressive?

Not as compared with what other professions have to pay.

795. A young man has to pay upon Letters of Orders when he is first ordained; does that appear to you to be much?

I forget at this moment what the amount of the payment is, but I think it is a small sum.

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796. Viscount *Halifax*.] It is 2 *l.* 2 *s.*, I think?
I was not aware what the sum was, but I know it was small.

797. *Chairman*.] A curate who is licensed, where the income is under 100 *l.*, pays 10 *s.* 6 *d.*, I think?
Yes, something of that kind. Again, I would speak with hesitation upon this, but I cannot help thinking that a very considerable benefit is derived from these matters being kept in some form and order, and a record being preserved; I do not see how that can be done without a payment, and I confess I do not see why a gentleman who takes Orders should be altogether considered in the light of a person who comes upon the country as an object of charity.

798. But at all events, whatever fees the clergy pay, they have to pay out of their own pockets; that is granted, I suppose?
That is granted, certainly.

799. The churchwardens with whom we were comparing them, you think have really a fair claim to be reimbursed their fees, and to have them paid out of a public fund?
They should be paid by the parish.

800. Earl of *Shaftesbury*.] Is it not the fact that the Canon says that the fee for Letters of Orders shall not exceed 10 *s.*?
I cannot answer that question.

801. If you will look into the Canon you will see that it is so, for I have looked into it very frequently?
I have no doubt your Lordship is quite right.

802. *Chairman*.] Should you hold that the changes in the value of money made any difference in that case?
I think that might be argued, and I think that the argument would be very fair, because I believe that what the clergy pay in respect of first-fruits and tenths is also upon the King's books.

803. I forget whether Letters of Orders are amongst the numerous things for which by Statute the fees are fixed; have you got the Order in Council?
I have the Orders in Council here.

804. Perhaps you can tell us what those things are, the fees for which were fixed by Statute?
I do not believe these fees were amongst them; they are not mentioned in either of these Orders in Council; I mean the Order in Council of 1857 and that of 1859.

805. Have you a list of those which are fixed by Statute before you?
I have those two Orders in Council.

806. Will you read the heads of them?
The first one was the Order in Council of 24th July 1857. I find that in the case of a donation; a presentation to a benefice, when the instrument is prepared by the bishop's secretary, the secretary was to receive 2 *l.* 2 *s.*; and he seems to be the only person who was to receive anything. In the case of a nomination to a perpetual curacy, when the instrument is prepared by the bishop's secretary, the secretary was to receive 1 *l.* 1 *s.* In the case of a collation to a canonry not honorary, the vicar general is to receive 1 *l.* 3 *s.* 4 *d.*, the registrar or other officer by usage performing the duty, 2 *l.* 15 *s.* 8 *d.*; the secretary to the bishop, 4 *l.* 4 *s.*; the apparitor, 3 *s.* 6 *d.*; the sealer, 4 *s.* 6 *d.*, and the record keeper, 4 *s.* 6 *d.* Upon a collation to an honorary canonry, the same fees were payable. Collation to a benefice, vicar general, 1 *l.* 3 *s.* 4 *d.*; registrar, 2 *l.* 15 *s.* 8 *d.*; secretary, 4 *l.* 4 *s.*; sealers, &c., 12 *s.* 6 *d.* In the case of an institution to a benefice, the vicar general is to receive 16 *s.* 8 *d.*; the registrar, 2 *l.* 2 *s.* 4 *d.*; the secretary to the bishop, 4 *l.* 4 *s.*, and the apparitor, sealer, and record keeper, 3 *s.* 6 *d.* and 4 *s.* 6 *d.* In the case of a license to a perpetual curacy (perpetual curacies being now vicarages), the vicar general, 9 *s.* 4 *d.*; the registrar, 1 *l.* 15 *s.* 8 *d.*; the bishop's secretary, 2 *l.* 2 *s.*; the sealer, 1 *s.*, and the record keeper, 1 *s.* The next is dispensation to hold two benefices; in that case the archbishop's secretary is to receive for the fiat, 1 *l.* 1 *s.*; the bishop's secretary for

for obtaining certificate of value, population, &c., and passing the dispensation through the offices, including the fees, 1*l.* 12*s.* 6*d.*, to the Faculty Office, 3*l.* 14*s.* 6*d.* Upon a resignation instrument when prepared by the secretary, 1*l.* 1*s.* Upon a commission for institution when issued, 1*l.* 1*s.* to the secretary.

807. Is that the table that was issued in 1869?
No; that is the table of 1857.

808. You are aware that a table was issued in 1869?
Yes, I have it here (*producing the same*).

809. That is under the statute 30 & 31 Vict. c. 105?
Yes. The Order that I have before me, is under a statute which is also repealed by the proposed Bill.

810. The Act of 30 & 31 Vict. c. 135, extends the statutable powers of imposing fees, does it not?
Yes; but the only order that I know of that was made under it is the one which was made by your Grace, by Lord Hatherley when Lord Chancellor, and by the Archbishop of York; that is for the consecration of a church.

811. Do you not find that ordination fees are mentioned in that?
There is an ordination fee at the bottom; the chancellor gets nothing.

812. That is by the statute of 30 & 31 Vict. c. 135, is it not, as embodied in an Order in Council in 1869?
Yes.

813. In that the sum of 2*l.* 2*s.* is appointed to be gathered for an ordination fee; is not that the case?
Yes; 2*l.* 2*s.*, and 5*s.*

814. That is under a statutable authority, which would supersede the canon?
Yes.

815. Therefore the canon is of no importance as compared with the statute?
Certainly it is not; this fee, which is payable for an ordination under the 30 and 31 of the Queen, is a fee paid to the secretary of the bishop.

816. How much is it?
£.2. 2*s.* to the secretary, and 5*s.* to the registrar.

817. To return to the point from which I started, you think that these fees are not excessive, but of course the clergy naturally take a different view?
I compare them with other professions, and I think that the clergy are very well off.

818. If it were possible to reduce any fees, you, at all events, see no objection to begin by reducing the fees paid by the clergy out of their own pockets, rather than beginning by reducing the fees paid by the churchwardens out of a public fund?
None whatever; and I cannot myself see why the parishes should not pay for the discharge of the different ecclesiastical duties which they get the benefit of.

819. You consider that these fees generally are paid for duties performed?
Yes.

820. You do not think that they are a mere mode of extorting money out of the laity and the clergy?
I cannot understand any honest man holding an office and having duties to perform, and not considering that he is responsible for the discharge of those duties.

821. Viscount *Halifax*.] Did I not understand you to say that one great difficulty about the churchwardens' fees is that they do not pay them?
Yes.

822. Do you think that you will be able to enforce the payment of them?
No, because the statute says that if they have no money they are not to pay them out of their own pockets, and no statute gives a compulsory power of getting the fees.

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823. Is it not rather unreasonable to expect a man to pay a fee merely for undertaking an onerous duty without any remuneration attached to it?
The churchwarden does not pay the fee, it is the parish who pays the fee to him, and he then pays it as part of his expenses.

824. Does not he, in the first instance, pay the fee at the visitation, and take his chance of getting it back from the parish?
In my own painful experience I find that he says, "I have got no money, and I decline to pay."

825. The meaning of that, I understand to be, that he does not consider himself liable to pay it out of his own pocket, and he sees no chance of getting it back from the parish?
That is the result.

826. Of course, if the parish contribute to the sustentation of the clergy, and other expenses, including the payment of fees, he will get it; but that is entirely a voluntary matter on the part of the parish?
It is quite voluntary.

827. He has, therefore, no certainty of getting back his money if he pays the fee?
None whatever.

828. Earl *Nelson*.] Is not an attempt to tax by law sums raised voluntarily likely to stop the raising of such funds?
Your Lordship knows what has taken place in the diocese of Salisbury quite as well as I do, and I do not think that the Committee on Fees in that diocese has affected the matter one way or the other. I think that as many parishes pay now as paid heretofore. I do not think that any fewer pay.

829. *Chairman*.] You are aware that, according to this Bill, this fee is proposed to be collected by stamps?
Yes.

830. Do you think that when a man is elected to the office of churchwarden, and the vestry which elects him knows that a stamp is to be paid for his admission to the office, they will be at all more willing to pay it?
The view I take of that is, that you will not get persons to take the office of churchwarden when they have to pay a fee at starting.

831. Even if this is represented to the vestry which elects them; that is the plan contemplated by the Bill, I believe?
Yes; but the man is not to be a churchwarden until he has paid his fee, as I understand the Bill, and I do not think he will pay the fee.

832. You are aware that two plans of admitting to the office of churchwarden have been suggested; the one is that he shall be admitted at the vestry, and the other that he shall be admitted at the visitation. If he were admitted at the vestry, would the vestry be more willing to pay the fee, do you think?
I think not; I do not think they would pay the fee.

833. Earl of *Powis*.] Is anything more necessary than that there should be some document which would establish the fact of A. and B. being actually and legally churchwardens of a particular parish?
The present practice is that a man brings his appointment, or something in the nature of his appointment, his admission, I do not know what it is technically called, and that is kept by the officer of the archdeacon, or the officer of the bishop, as a record of his appointment.

834. For the purpose of all legal proceedings that might be taken by any churchwarden; is anything more wanted than that there should be some official record of his having been appointed?
No, I think not.

835. Would not that record be sufficient, if it were an entry in the parish book, that he had been appointed churchwarden at a particular vestry?
That would be the best evidence, I should think, or very good evidence at all events.

836. If

836. If there were a record in the parish book of the election of a person as churchwarden, would there be any necessity for any further formal admission of such churchwarden before an archdeacon or any other officer?

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No, not as this Bill now stands; but formerly he used to be admitted before the officer.

837. Viscount *Halifax.*] Is he not formally admitted by the archdeacon or the bishop, as the case may be?

Yes, according to the present practice.

838. No mere record of his election at a parish meeting would justify him in acting legally as a churchwarden?

No.

839. Earl of *Powis.*] Might he not perform the duties of his office as well upon a minute of election as upon any formal admission?

I think not now; that is, not as the practice is at present.

840. Viscount *Halifax.*] Is it not the law at present that supposing a person elected as churchwarden is not legally admitted, the preceding churchwarden goes on as legal churchwarden, possibly for 20 years?

Yes, until the admission of his successor.

841. Bishop of *Ely.*] Would you think it desirable to change the practice of admission at the visitation?

No; I think it works well. I think that the scheme in this Bill would go a very long way towards preventing churchwardens from attending visitations at all.

842. And you would think it very important that they should attend visitations?

I have found it, in St. Albans, of very great use that they should attend visitations.

843. Does it not often lead to the healing of differences and the settling of questions by the personal intercourse between the archdeacon and the churchwardens, which questions might otherwise ripen into serious annoyances?

It leads very often to that, and it leads also to another very great benefit when those presentments are made, which many people think unimportant; there are such things as the drainage of the church, broken windows, the condition of the churchyard, and a variety of things of that kind, which, if judiciously taken notice of to the churchwarden, one finds, at the next visitation, he has attended to. I speak from my own experience in this matter.

844. Then you would think it very undesirable to make any new regulation which would tend to discourage the attendance of churchwardens at visitations?

Yes, I have a very strong opinion upon that point.

845. Lord *Hatherley.*] You think that the absence of any necessity for the attendance of the churchwardens at the visitations, for the purpose of their admission, although unaccompanied with any fee, would prevent their attending. You think that if we do away with the necessity for their attending, they will not attend?

I think if they were admitted, say at Truro, they would not trouble themselves to go elsewhere; they would say, "We are admitted, and we have paid our 5 *s.*, and therefore the archdeacon or the bishop may do just as they like; we shall not go."

846. Upon a matter which you touched upon just now, let me ask you a question, namely, as to the possibility of providing a payment out of any fund raised at the offertory for the sustentation of the Church. You seem to object to a fund being raised at the communion offertory for the sustentation of the Church, is that so?

I should object to it.

847. And you also object to the payment of curates by that means?

I spoke quite individually; if the case were before me in chambers to advise upon I should say: You cannot apply offertory money to those purposes.

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848. Do you not think that the hortatory sentences contain something which throws light upon the appropriation of the fund; for instance, "If we have sown unto spiritual things, is it a great matter if we shall reap your worldly things?" and "Who goeth a warfare at any time of his own cost?" does not that point to the clergyman?

I think not, judging it by the context. I have known the view which your Lordship suggests taken so strongly, that I have known the offertory money applied for the purpose of repairing the rectory house; and possibly it was that case which came before me, which may have led me, erroneously perhaps, to take the strong view I do as to the right appropriation of the offertory money.

849. Lord *Winmarleigh*.] You made a comparison between the Church and the Bar, and you took 250 *l.* as the average income of the clergy of England generally; do you think that it is a fair comparison to make between a young man going to the bar, with prospects of a very large income, and a clergyman with a living of 60 *l.*, 70 *l.*, or 80 *l.* a year?

If your Lordship knew the profession to which I have the honour to belong as well as I do, you would know how few there are who come to the bar who realise 250 *l.* a year, whereas with a clergyman it is a certainty, a freehold for life.

850. Are there many instances where a man going to the bar as a profession makes so small an income as 80 *l.* or 90 *l.*?

I was five years at the bar before I made a guinea.

851. What is the amount of fees that a clergyman with an endowment of say, 80 *l.* a year pays on his induction?

I think it is high in proportion there; I think the fee is from 7 *l.* to 9 *l.*

852. Surely that should come in preference to relief of the churchwardens, a large fee of that kind?

I think I so stated to the Archbishop, that if there is any reduction there it should be a reduction in favour of the man who pays out of his own pocket, rather than in favour of him who pays out of the pockets of other people.

853. Earl of *Powis*.] I think you spoke of churchwardens' fees being 18 *s.* in some cases?

I think it was under one of these Orders in Council; it is under the Order of the 15th March 1869, in pursuance of the 30th and 31st of the Queen; I think it is 18 *s.*

854. I am informed that in many parishes in the diocese of Hereford the fee is only 7 *s.* 4 *d.*, and that in some parishes in Saint Asaph it is only 1 *s.* 6 *d.* Do you think in the latter class of parishes the churchwardens would like to be raised under this Bill to a prepayment of 5 *s.*?

I look upon this as a statutory fee, and if any fee is paid at all I should say that the fee of 18 *s.* ought to be paid. I am aware that in Buckinghamshire, for instance, the late Archdeacon of Buckingham did away with fees altogether. Whether that is legal or not I would rather not express an opinion; and so as to those instances which your Lordship has mentioned, I do not think that there is any power in any individual to alter the fees. I think this Order binds him; at the same time if he has no money he need not pay at all.

855. Earl of *Shaftesbury*.] You said you could not conceive of any fees being paid without a corresponding duty?

Yes.

856. Now, we gather from the returns which were laid before the House in 1871, that there are two sums, one 1,666 *l.*, and the other 1,656 *l.*, amounting to nearly 3,000 *l.* a year, paid to the apparitors of the bishops and the archdeacons. Now what possible duty do they perform for that?

The apparitor has to serve a number of notices. I will take, for example, the faculties, a faculty for restoring the church, there the apparitor has to serve the notices; he has to fix the notices on the church door, and he has to make a return that he has so done; and I think in those cases the apparitor's fee is some 3 *s.* or 4 *s.*

857. The

857. The sums amount to more than 3,000 *l.* a year altogether?
I do not know how that may be; I can only speak of the individual fee.

858. *Lord Steward.*] Do you not think that a considerable portion of the objection of the apparitor's fee would be removed if he were called messenger instead of apparitor, as more nearly representing the duties he performs?
I hardly know how that would be; those things affect the minds of different people so very differently; it might possibly. The whole system of fees naturally being a very objectionable one, the change of name might make a difference.

859. Bishop of *Ely.*] Does not the objection a good deal arise from the fact that they do not know or understand what they are paid for?
No doubt it does.

860. Therefore any name which cleared up that, and carried with it the obvious sense of a certain duty, would tend to diminish the objection?
Yes.

861. *Chairman.*] Is the apparitor the person who keeps order in the court?
He does that; but I should say his more essential important duties, so far as I know them, are to give all the notices, and to make a return.

862. He gives all notices with regard to visitations, does he not?
With regard to visitations, and certainly with regard to faculties. I was speaking of faculties, because I had a case before me yesterday of a faculty in which I saw that the apparitor had fixed the notice, and had served the notice, and had made an affidavit that he had so served it.

863. There are cases, of course, in which the apparitor does not perform the duties himself, but by deputy?
Yes.

864. Probably those are the cases which have given rise to dissatisfaction, about the apparitors receiving fees?
That I cannot say.

865. The same thing might be said of registrars. The duties of registrars you have defined as very important, I think, have you not?
Yes.

866. And yet we know that they have been performed by people who have lived at very great distances from the United Kingdom. Therefore the dissatisfaction is probably on account of the duty being performed by deputy, rather than as to the duties of the office being insignificant?
That was the vice inherent in the old system in the Prerogative Court especially, where I believe a large sum, amounting to several thousands a year, was enjoyed by the registrars, who appointed deputies, who did the whole of the duties.

867. And the apparitors have occasionally appointed deputies too?
Yes, the apparitors have occasionally appointed deputies. I do not know whether there is any increased cost to the public on that account.

868. You consider that if the apparitor does his duty, he is entitled to his fee?
Certainly, and I consider that his duties are important, and that they ought to be discharged; I cannot say whether they are.

869. Earl of *Shaftesbury.*] I have here the 135th Canon, intituled "A certain rate of fees due to all ecclesiastical offices," and the close is, "Provided furthermore that no fee or money shall be received, either by the archbishop or bishop or suffragan, either directly or indirectly, for admitting of any into Sacred Orders; nor that any other person or persons under the said archbishop, bishop, or suffragan, shall for parchment writing, wax sealing, or any other respect thereunto appertaining, take above 10 *s.*, under such pains as are already by law prescribed"; are these canons binding on the clergy?
Certainly.

870. *Chairman.*] Except when altered by statute?
Except when altered by statute.

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871. Earl of *Shaftesbury*.] They are repealed by a power given by statute to the two archbishops and the Lord Chancellor for the time being?

Yes.

872. Was any communication made to the clergy that such a change would be made in the amount of the fee in this case?

Not any that I am aware of, further than that usual way and most inadequate way of publishing it in the London Gazette.

873. Do you suppose that the clergy were directly or indirectly consulted on it?

I cannot form an opinion.

874. Would it be possible for some of the clergy who hold high opinions to hold this canon to be superior to the statute law of the realm?

I have never heard of any such cases; I cannot say what may arise.

875. A sum of money is levied upon the issue of every marriage license; can you tell the Committee upon what authority that power rests?

No, I do not know that I can, except that it is under the dispensing powers which the Archbishop of Canterbury with the bishops holds under a Statate of Henry VIII. What the particular statute is I cannot tell your Lordship at the present time.

876. You are not aware of any statute whereby such a large sum of money is levied upon Her Majesty's subjects, amounting to 30,000 *l.* or 40,000 *l.* a year?

The Marriage Act of George IV. sanctioned that, because it provided, so far as I remember, expressly that nothing in that statute should interfere with the licensing powers of archbishops and bishops.

877. That is supposing that some powers were given to them by some well known and constituted authority?

Which would be by the Statute of Henry VIII.

878. Does the Statute of Henry VIII. contain a provision that that sum of money shall be levied upon the issue of a marriage license?

No, it does not expressly; but it confers upon the archbishops and bishops that dispensing power which the Popes had, and for which the Popes did receive sums of money; but I think that the answer to your Lordship's question is this: why, when there is a direct power given by the 19th and 20th of the Queen to levy exactly that sum of money upon Her Majesty's subjects who go to a district registrar, should not the persons who go to an ecclesiastical registrar, so to speak, pay the same sum?

879. That is an inference?

At present I can only get it by inference. I think that it is very desirable, if the Committee will allow me to say so whilst considering this Bill, to bear in mind the distinction between what are purely ecclesiastical fees and what are civil fees; because I look upon marriage licenses as civil fees altogether. The fees that we have been talking about, that the Committee has been asking me about, are more or less ecclesiastical fees; but the license fees are essentially civil fees.

880. Earl of *Powis*.] Do you think that 2 *s.* 6 *d.* would be sufficient remuneration to the surrogates in the country for the trouble and responsibility of making proper inquiry before the issue of a license?

I would rather say this, that if there is to be a deduction made upon the charges which are made for licenses in many dioceses with respect to existing surrogates, I would rather it were made from the registrar and the chancellor than from the surrogates; but in some cases I have been told that the surrogates charge as much as a guinea, which is exorbitant.

881. I think a considerable portion of the 2 *l.* 12 *s.* 6 *d.* to which Lord Shaftesbury referred, is a Government duty?

Twelve shillings and sixpence is the duty of the Government. I would rather not give this as a positive answer to Lord Shaftesbury's question; but I cannot help thinking that the Act which imposes that 12 *s.* 6 *d.* duty may possibly refer also to

to the fee paid to the ecclesiastical officers in case of marriage licenses, but I do not know.

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882. At present I believe the surrogate's share is generally 12 *s.* 6 *d.* ?
I do not know at all; it varies in different dioceses.

883. Bishop of *Ely.*] The surrogate has a great responsibility, has he not?
The surrogate should have all the responsibility of inquiring into whether they are fit persons to marry, that is, whether they are within the degrees, or whether one of them has been married before, and as to residence; those are inquiries which, of course, the surrogate is the best person to make, being on the spot.

884. And, therefore, putting aside the vested interests of the existing surrogates, do you think that 2 *s.* 6 *d.* would be a sufficient remuneration for that responsibility?
Well, it is a small sum, but I do not see why it should not be enough.

885. Would not making such inquiries, especially in the country districts, sometimes itself entail expense?
The expense would be very trifling, I think, because it would be all within his own parish.

886. That is, supposing the parties belonged to his own parish; but supposing that though in his district they belonged to some other parish?
He could communicate with the clergyman of that parish.

887. But still there might be a considerable amount of time and trouble involved?
There might be, no doubt, The question of marriage licenses, I think, is one very little understood by the public, and they are apt to suppose that it is a mere matter of going and taking an oath, and paying a certain sum of money, that that is all you have got to do. But, practically, there is much more than that.

888. *Chairman.*] May I ask, are you acquainted with Archbishop Whitgift's Table?
No, I am not.

889. You could not say whether that was recognised by statute?
I cannot.

890. Would you be of opinion that a court of law would sustain the claim to a marriage license fee?
Yes.

891. Then of course it must be a legal fee?
There is no doubt that it is a legal fee.

892. And, whether by statute or not, it is part of the law of the land?
It is part of the law of the land by long usage.

893. Then you are of opinion that it is not arbitrarily raised from Her Majesty's subjects by the Archbishop of Canterbury and other people, but that it is authorised by the law of the land?
My answer to that question would be, direct (though I could not give a direct answer to Lord Shaftesbury's question), that the law of the land recognises that license when it affixes the stamp upon the license.

894. But if you are asked whether Archbishop Whitgift's Table has been recognised by the statute of George IV., you could not be perfectly certain as to answering the question at this moment?
No. Now that your Grace mentions it, I remember having seen it a long time ago; but I have not had occasion to refer to it for the last 25 or 30 years, and I had forgotten it entirely.

895. Let me ask you this; the clergy are charged very highly for stamps on institution; at least they think they are; you are aware of that?
Yes.

896. And it is not unusual for them to pay the sum which includes the stamp along with the fees levied for the ecclesiastical officers, to a solicitor, who pays

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the whole for them. Therefore, it not unnaturally presents itself to them in this aspect, that they pay a very large sum to these officers, whereas the Government receives the lion's share. Is that your impression? For example, supposing a man to be fortunate or unfortunate enough to be appointed to a Crown living, do you know whether he pays a very large sum to the officials for the use of Her Majesty's Great Seal?

I cannot answer that question; I do not know.

897. Or even if it is not under the Great Seal, that there are large sums paid not to ecclesiastical officers at all, but to the Government?

I do not know at all what the fees are that are payable to Government.

898. You are aware that there are stamps payable to the Government?

Yes, there are stamps.

899. And these I think you said, on a suggestion of the Archbishop of Canterbury, were lowered by Act of Parliament through the intervention of the Chancellor of the Exchequer in the year 1864?

They were lowered; I do not know the precise year.

900. So that livings were charged under 100 *l.* a year, 1 *l.*; under 200 *l.* a year, 3 *l*; under 250 *l.* a year, 4 *l.*, and the others, 5 *l.* So that the whole system was endeavoured to be made less oppressive to the clergy than it was before?

Up to a certain point, if I recollect rightly. I think after that there was a sliding scale.

901. But still they press somewhat heavily upon the clergy?

The clergy think so.

902. Of course you think it desirable to reduce the pressure upon the clergy as much as possible?

Naturally so.

903. A very important point was started in Mr. Dyke's examination the other day, on which I should like to ask you a question. There is stated to be a power of altering the fee on marriage licenses; do you believe that such power exists anywhere?

I think such a power does exist, because, as I suggested to your Grace, I think it would be very desirable that marriage licenses throughout the country should be put upon the same basis.

904. Then do you think that, short of a statute, any power could alter the fee on marriage licenses?

That was a question which was considered some years ago, at the time, I think, when your Grace was Bishop of London; and there I think Dr. Lushington thought, and I believe so advised your Grace (but I am not sure), that, with the consent of those who were interested, it might be done, but not without.

905. That was what was maintained by Mr. Dyke the last day that we met, that these fees could be altered, with the consent of all the parties interested, not otherwise?

That I think was the result at the time I am speaking of.

906. And you have not formed any opinion adverse to the statement of Mr. Dyke on that matter?

Some three or four years ago I considered the subject, and I thought then that, with the consent of those interested, it might be; but I thought not adversely to them.

907. You are aware that a large sum was paid to the proctors for a number of years as compensation, in consequence of the change to which you have alluded in Dr. Lushington's time?

I would respectfully object to the word "compensation." The history of that transaction, with your Grace's permission, I think the Committee ought to know. It was in the former times, when Doctors' Commons existed; there were a number of persons about Doctors' Commons who had the privilege of going to the registries and getting these licenses, for which they paid the regular fee themselves of 2 *l.* 12 *s.* 6 *d.*; and many of those persons exacted from their individual clients, for instance, 5 *l.* (I know one particular person

person who always charged 5 *l.* for a marriage license); and when this was brought to the knowledge of the then Archbishop of Canterbury, and the Bishop of London, and the Master of the Faculties, they directed that that power should cease, and that all licenses should issue directly out of the registries, and not through a proctor from the registries. It was thought hard to make the honest suffer for the dishonest; and, inasmuch as it was scarcely possible to mark out the black sheep, the then officers of the registries said that they would sacrifice for a period of 10 years a portion of the fees that they were legally entitled to, as a sum which would make up, to some extent, the loss which the proctors in general sustained in consequence of the dishonest practices of some of their body. But in the way of compensation I do not think it was. A compensation in the strict sense of the word; because compensation implies value for a right; whereas these persons, honest or dishonest, never had the right, but it was only for their own convenience, which many of them abused.

908. At the end of 10 years what became of that matter?
At the end of the 10 years the officers of the three offices received back what they had voluntarily surrendered during the three years.

909. Where they entitled to do so?
Certainly; because they need not have given anything to the proctors at all; it was a free gift on their part.

910. Could the Archbishop or the Bishop of London, separately or united, have appropriated the money otherwise?
No. What the Archbishop of Canterbury and the Bishop of London, and the Master of the Faculties did do, and could do, was to say, "No license shall issue out of our offices except on the application of the parties themselves."

911. But when the 10 years ended, during which the money was paid to the proctors, the money reverted to those who had voluntarily surrendered it?
Yes.

912. Lord *Hatherley*.] It was, in fact, an annual payment made to those proctors, to the class supposed to have been injured, but the public paid the same?
The public paid precisely the same to the officer, and the officer said, "Inasmuch as A., B., and C. have suffered because D. and E. abused the confidence reposed in them, we will allow A., B., and C. so much for 10 years."

913. And in those 10 years they continued to receive the same sum from the public?
Yes; the public did not suffer at all, because that allowance was made to the proctors.

914. *Chairman*.] It is very important to know whether you think that at the end of the 10 years that money might have been appropriated by any authority, that of the Archbishop and the Bishop of London, to others than the officers who had voluntarily surrendered it?
I am decidedly of opinion it could not; it was a perfectly free gift.

915. You are probably aware that there is in the original orders by which this was settled, a variety between the orders one, two, and three, and that in the third order the consent of the officers is mentioned, and not in the others?
I was not aware of that.

916. There is some ambiguity in that; but you think the consent of the officers was requisite?
I have always thought so.

917. I am not certain of the fact that I have now stated, but I believe it to be the case?
I was not aware of it.

918. Lord Bishop of *Gloucester and Bristol*.] With regard to marriage licenses, you said that you thought it very desirable that there should be a uniform charge throughout England for marriage licenses. Do you consider it desirable that it should be as high as 2 *l.* 12 *s.* 6 *d*?
I think so, because that is the sum which the Legislature has fixed for civil licenses.

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919. Do you happen to know how much a license costs in Ireland?
In Ireland it costs, I believe, very considerably less.

920. Do you see any reason why there should not be licenses as small, or graduated in the same way, in England as they are in Ireland?
I do not know how the system may work in Ireland; but there is always a difficulty in working a graduated scale, and always a hardship upon those who come just above the line; and as nobody is obliged to be married by license in England, I see no necessity for altering this fee, which has, at all events, this foundation for it, that it is, as I said, the civil license fee.

921. It has been urged many times, that if the marriage license fee were reduced in England as in Ireland, there would be more applicants to be married by license, so that even a greater sum might accrue than under existing arrangements. Do you think that, from your experience, likely?
My objection to that would be upon principle, that I do not think it ought to be made a matter of bargain that you should marry for less in one way than in another. As to the question that your Lordship put to me immediately, whether I thought the number of marriages by licenses would increase or not, I have no means of forming an opinion.

922. As we are still on fees, might I allude to what you said about the payment in the case of canonries, the future holders of canonries. If I took your words down rightly, the fees, you said, would amount to about 8 *l.*?
I was reading the Order in Council.

923. The secretary four guineas, and then some sum of two guineas?
It is rather over 8 *l.* altogether.

924. Then you stated to us that the same sum was paid by a person appointed to an honorary canonry?
I so find it in this Order in Council.

925. Assuming that that is correct, do you not think it is very undesirable that a person appointed to an office where there are no emoluments should pay a sum as large as is paid by the holder of one which has in some cases good emoluments?
There is a difference of two guineas, I see; the bishop's secretary gets two guineas in the case of an honorary canonry, and four guineas in the case of a not honorary canonry; that is the only difference.

926. Do you not think that that is a fee which certainly might be very judiciously lowered?
The answer to that question would be that the person who has the honour conferred upon him need not accept it unless he chooses to pay.

927. *Chairman.*] Are you aware that in the diocese of London, certainly, and I believe also in that of Canterbury, no such fee is levied?
That I do not know at all.

928. That a mere nominal fee for business done is levied, whether it is lawful or not?
That I do not know at all.

929. Lord Bishop of *Gloucester and Bristol.*] Then, with regard to the churchwardens, you expressed your opinion that it was very desirable that they should attend the visitations of the archdeacons, and visitations generally; that they should personally attend. Have you found, in your experience as a chancellor, any objections made by them to attendance from distance or otherwise?
No, none.

930. And the experience in the diocese with which you are connected, Salisbury, would be favourable to their attendance?
They attend.

931. Earl *Stanhope.*] If the churchwardens' fees were abolished, do you think they would attend, in all cases, the visitations?
I think it would not make any difference; but I think that if they were appointed churchwardens, as the Bill proposes, in vestry, they would then cease to

to attend the visitations; the main object of their attendance being their admission as churchwardens.

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932. But I thought that the reason that they did not attend, even as churchwardens at visitations, was in consequence of their objecting to paying the fee?
I assure you they have no modesty on the subject. When any officer asks them to pay, they say they have no money, and will not pay.

933. Lord Bishop of *Gloucester and Bristol.*] But would that apply to every churchwarden; have you not found some who felt that they were morally constrained to pay something?
I gave his Grace some time ago my experience in that matter. My experience in Salisbury is only of one visitation, and therefore I cannot say as to that. My experience in St. Albans ranges over now some 20 years; my fees were originally something about 29 *l.*, and they are now under 3 *l.*, in consequence of the moral or other objections which the churchwardens have to pay.

934. Then to narrow it all to one question, is it not your opinion that it would be best to remit all fees to the churchwardens?
The only objection to that is this; practically, I think that it is of very little value, but I think there is this objection to that, that some funds ought to be contributed towards what seems to me necessary, namely, the attendance of certain persons officially at these visitations; and I do not see how a fund can be better provided for that if possible than by the parishes which are visited, the parishes being represented by their churchwardens. With your Lordship's permission, I think one must keep clear of the idea that the churchwarden pays out of his own pocket; that he strenuously refuses to do; it is the parish which pays.

935. But is not the whole difficulty in this question establishing the link between the parish and the churchwarden in this matter of payment. The parish has, it is alleged, nothing to supply the churchwarden with; the churchwarden does not choose to pay out of his own pocket. It is right, I quite agree with you, that the parish should pay something for the advantage derived; but yet, between all these considerations, the upshot is that a charge is made and there is no payment; and is not that plainly undesirable?
I do not think that it works any mischief.

936. *Chairman.*] You do not, then, think that it is desirable to relieve the churchwardens rather than to relieve the clergy?
No, quite the contrary.

937. The payments by the clergy you consider not oppressive, but still they are large, including the stamps?
I would not accept the word oppressive or large without reference to other persons who pay upon admission into professions; my own profession, for example, and that of a medical man.

938. We have had before us the subject of stamps on livings below 300 *l.* a year; are you aware that the stamps on livings above 300 *l.* a year still remain very heavy; that they are felt to be very burdensome?
I believe, as livings increase the stamps are increased.

949. *Lord Steward.*] You were good enough to sketch out for us the jurisdiction of his Grace, which, I think, you described to be fourfold?
Yes.

940. Could you give us that again very shortly?
There was the provincial jurisdiction; the metropolitan jurisdiction, that is throughout all England; the faculty jurisdiction; and then the diocesan jurisdiction.

941. Under which of those jurisdictions would fall the discipline which the archbishop would exercise in the event of a bishop offending against the laws ecclesiastical?
That would be in his provincial jurisdiction.

942. With the advice of his vicar
If he chose to take it.

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943. Then, in the case of the Bishop of St. David's, in the last century, he was removed by the archbishop, exercising his provincial jurisdiction?
I think so.

944. With the advice of the vicar general?
That I cannot say.

945. Then with regard to the jurisdiction of the vicar general, I think you told us that was exercised at the confirmation of the bishops. I understood you to say that you thought that portion of the jurisdiction might be advantageously done away with?
I think so; I think that is a sham.

946. You ground that opinion on your belief that the confirmation is a sham?
Yes.

947. Because I understood you further to say that it had been held that objectors had no right to be heard?
That was so held in the Hampden case.

948. By whom?
By the Court of Queen's Bench.

949. In the case of the Bishop of Hereford, the objectors applied to be heard; the vicar general refused to hear them, and the objectors then applied to the Court of Queen's Bench for a mandamus to compel the vicar general to hear them; the judges being divided in opinion, that rule was refused, and the matter fell to the ground. But is it not within your knowledge that in a recent case to which you have referred, the vicar general said that it was part of his duty to hear objectors on the question of the validity in case of any informality in the election by the dean and chapter?
I was counsel in the case to which you refer, and I was heard, and the result of the case was that nobody was heard to make objections; it was heard rather *pro formâ*, I should say, by the then vicar general.

950. It was held in that case by the then vicar general that objectors on certain grounds would have a right to appear?
I would not go quite so far as that. I would rather say that one was heard out of courtesy rather than by way of right.

951. But if I remember rightly, the vicar general on that occasion laid it down that in the event of any informality, he would have been bound to hear the objectors on that point?
It was rather a suggestion of his, I think.

952. At all events, on that occasion the vicar general did exercise a distinctly judicial function?
Clearly so.

953. Earl of *Powis*.] Do you think that a universal system of fees by stamps, such as is established by this Bill, would be worked conveniently with so many registrars and various classes of persons receiving them and paying for them?
I think there are some of these fees which might with convenience be collected by stamps; they are the fees upon instruments in inductions, and matters of that kind; but I can imagine that there would be very great difficulty in collecting the fees upon marriage licenses by stamps.

954. Supposing fees on churchwardens' nominations were so collected, would it be inconvenient to a registrar to have 400 or 500 stamps, as might be the case in a large diocese, every year on his hands at Easter?
I should think that it would be extremely inconvenient; and I should have thought that if the system of stamps were adopted, the best means of getting stamps would be through the Government distributor of stamps for the district, because he is paid a given per-centage, I think, or a salary, as distributor of stamps, whereas no allowance at all would be made to whoever the person was under this Bill, so far as I understand it, who had these stamps at his disposal for distribution from time to time.

955. Would

955. Would it be a great additional trouble to churchwardens and other persons to be obliged to send by post sometimes for stamps to a registrar in another county instead of getting them from the nearest stamp distributor?

It would have, of course, that inconvenience; but then, one must remember that the stamp distributor might be at some little distance, and therefore it might be as easy to get them by post from one place as from the other.

956. With regard to the office of registrar, is the registrar an officer of the bishop or an officer of the diocese?

That was one of the points upon which I should have been glad, and am now very glad, of an opportunity of stating my views, whatever they may be worth, to the Committee. The clauses in the Bill which make the appointment to the office of registrar, and the holding of the office of registrar, during pleasure, seem to me to be extremely objectionable. I know of no instance myself in which a person in this country holding a judicial or quasi-judicial office such as the registrar holds, holds such office during pleasure; it is always during good behaviour, so far as I know. The registrar has a good many duties to perform which may bring him in collision with the diocesan, and the registrar is not the bishop's officer; he is the diocesan officer. To mention one instance which I know in my own experience; a bishop staying at a country house was induced by his host to direct that a faculty should be granted to make a door in a wall of the church; and when the bishop directed his registrar to carry out this faculty, this wish of his, the registrar objected, and said that the thing was totally illegal to be done in that way; that it could not be done without the usual form of a court, and notice to all the parishioners and everybody else; and there was a very considerable amount of warmth of expression.

957. *Chairman.*] Not on the part of the bishop, perhaps?

No, my Lord, not on the part of the bishop; on the part of the country gentleman; ultimately the faculty was refused, for which I believe I was responsible. It was of course a very disagreeable duty for the registrar to have to refer it to the chancellor, whether that should be done or not; and I think the office ought to be kept quite distinctly. The question of the secretary is quite distinct. The secretary is a personal officer, the officer of the bishop, and rather than that the bishop should appoint, during pleasure, the registrar and combine the two offices of the registrar and secretary, I have always entertained a very strong opinion that the secretary and the registrar should be two distinct persons, and upon that matter there is a technical perhaps, rather than anything else, objection, as it seems to me, to this Bill as it now stands. The during pleasure Clauses are the 9th and 10th and the 12th, but then comes this, which is the 14th. "The registrar of a province or diocese shall on any vacancy in the office of archbishop or bishop of such province or diocese continue to hold office until the confirmation of the election of the successor of such archbishop or bishop." Now if that clause stands, if I understand the construction of the clause rightly, every succeeding bishop will have to make a fresh appointment; therefore this diocesan officer, if am right in so considering him, will not only hold office during pleasure of the reigning bishop, but he will actually have to be re-appointed; his office will become *de facto* void on the confirmation of a succeeding bishop; and therefore there possibly may be, in many cases there certainly will be, a change in the officers, a shifting of all the records of the diocese; and, as far as I can see, the greatest possible inconvenience without any benefit that could be suggested except the amalgamation of the two offices, an amalgamation which I confess seems to me to be rather mischievous than beneficial; and, as I say, the appointment of a judicial officer during pleasure seems to me to be an anomaly in the whole system of this country.

958. Earl of *Powis.*] Do you see any reason why the registrar's office should be taken away by this Bill, and given over to the Ecclesiastical Commissioners, if it should happen at the present moment that the existing registrar prefers to use his own office?

As to that, I am not able to answer your question.

959. Are you aware as to the extent of property held by individual registrars in different dioceses?

No, I have no information on that.

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960. Do you see any reason why if there is any small property attaching to the registrar of a particular diocese, that should be taken away from him as proposed by this Bill?

I should have thought that it was most convenient that all the records should be kept, and continued to be kept in the same office; but I think that in some of the previous Returns which have been made, either to the House of Lords or to the House of Commons, it has been stated that many of these registries were in a very dilapidated and unsafe condition; how that may affect that question I do not know.

961. Do you see any advantage in vesting the property of these registries in the Ecclesiastical Commissioners instead of, as now, in the individual registrar?

That is part of a larger question. I see great objection myself to the great duties which are thrown upon the Ecclesiastical Commissioners by this Bill. I think that they are an unnecessary importation, and it seems to me that there is a machinery in existence which could work all the essential provisions of this Bill without the introduction of the Ecclesiastical Commissioners, and without the expense consequent upon their being introduced.

962. *Chairman.*] Do I rightly understand from you, that as far as you know there are public registries in most of the dioceses?

I have no knowledge at all on that.

963. It was stated by Mr. Dyke that there was none in Canterbury for the provincial diocese?

I do not know as to that.

964. It was stated that the vicar general's office was the registrar's private property, and that there was no public office?

I think there is no public office.

965. And that the documents were not kept there except for a short time, but were removed to Lambeth?

I do not know how that is.

966. You think that the registrar ought not to be made dependent upon the pleasure of the bishop; are you satisfied with the present system as to the tenure of the registrar's office?

As it has worked of late years.

967. Do you mean by its being a *quasi* freehold?

Always during good behaviour.

968. What are the letters patent which Mr. Dyke mentioned in his evidence; he said that he held his office by letters patent?

I do not know; I have never seen his patent.

969. These patents, I think, are confounded by the dean and chapter, and are supposed to confer a freehold, or something almost equivalent to a freehold?

In the case of my own patent it is confirmed by the dean and chapter, and no doubt it is a freehold; but, like all freeholds (I think I am right in this) which have duties attached to them, of course it is only during good behaviour.

970. But how would the absence of good behaviour in the case of a man holding a freehold during good behaviour be proved; how could you prove that absence?

In the ordinary way.

971. By an action at law, you mean?

Yes.

972. Then it would appear that the present system confers upon the registrar almost a freehold?

Yes; the same as a registrar in any civil court.

973. Has not that led to persons appointing deputies, and not discharging their duties in person?

That would be an abuse, and it might be such an abuse as might lead to the removing of the principal registrar, and his deputy would fall with him.

974. Do

974. Do you suppose that a court of law, as the law stands at present, would order a registrar to be removed because he appointed a deputy?
Not, possibly, because he had appointed a deputy, but because he had not discharged his duties.

975. Do you consider, then, that cases which are of public notoriety and which are scarcely extinct now, are violations of the law, cases in which the registrar does not perform his duties personally?
Those violations of the law, I think, were sanctioned by statute; but I doubt very much whether such a violation of the law would be possible now.

976. For example, Mr. Dyke stated that for 10 years he held the office of deputy registrar under Mr. Moore; do you consider that to have been a violation of the law?
I think it was a very improper appointment, and I think that Mr. Moore might have been obliged to discharge his duties himself.

977. The duties of the Registrar of the Faculties are at present discharged by a deputy?
They are.

978. Do you conceive that to be a violation of the law?
I do; save that I think it was sanctioned by statute.

979. Then it is not a violation of the law, is it?
Not now; but any further abuse of the law would be.

980. Do you ground that upon any statute?
I think that all those offices to which your Grace has alluded, which are the principal registrarships in Canterbury, and also the Mastership of the Faculties, are confirmed by some of those Acts which were passed in 1857 and 1858; all the registrars were confirmed in their office.

981. What I want to know is this: we have been led to suppose that we cannot put an end to the abuse of appointing deputies, and making the office of registrar a sinecure, without fresh legislation; do you think no fresh legislation is required for that?
I should think not.

982. Would you state on what you ground that opinion?
That the man is appointed to discharge certain duties; and if he does not discharge those duties, he might be removed.

983. Was not that always the case? Mr. Moore, for example, Lord Canterbury, and every one were appointed, were they not, to discharge their duties?
Yes; but that was part of the lax system of the day.

984. And you do not think there is any danger of a lax system at the present day?
I think public opinion is too strong.

985. Then it is rather on public opinion than on a statute that you ground that opinion which you have expressed?
But your Grace will bear in mind that I said that those appointments, such as exist now, have been confirmed by statute; for myself, I should have no fear of those things recurring again. There is a case in which one of Her Majesty's general officers was a chancellor of the diocese for many years; but I think there would be no risk of that in these days; I mean apart from this Statute, which makes it necessary that he should be a barrister.

986. One of the proposals of this legislation is to put an end to these things?
Yes.

987. Could any middle term be thought of between a man having an absolute or *quasi* freehold, and his holding merely at the will of the bishop?
I think that the provisions in this Bill seem to me to meet all those difficulties with respect to the appointment of the deputy, and the payment of the deputy, and so on.

988. So that you would retain a large portion of the provisions of this Bill

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with regard to the registrars, though you would make the office tenable on good behaviour?

That, so far as I am aware, is the only objection that I see to anything connected with the registrar, save as to what, perhaps, the Committee will allow me to state as to the fees.

989. Bishop of *Ely*.] I think one of your reasons for holding that the tenure of the registrar should be during good behaviour was the custody of the books?

The custody of records.

990. Is it not the fact that the bishop's secretary has the custody of very important records?

That I cannot say.

991. Is not the Act Book in his custody?

That I do not know. The bishop's secretary historically came into existence, I believe, at the end of the last century, and he is mentioned as having a statutable existence in very few statutes.

992. Earl of *Shaftesbury*.] You do not mean his private secretary?

I mean his secretary existing at all. There was a statute at the end of the last century, which, I think, was the first statute in which there was any mention of the bishop's secretary.

993. Bishop of *Ely*.] As a fact, the custody of the records has been in the deputy registrar, where there has been a deputy registrar?

It has been, certainly.

994. Therefore the records have been in the custody of a person removable at pleasure?

Yes, with this; that the registrar was always the person who was legally responsible for them.

995. Viscount *Halifax*.] Are you aware in how many dioceses the deputy registrars do the work?

I can only answer for my own diocese, in which the registrar himself does the work.

996. Bishop of *Ely*.] Is it not the fact that in many of those offices the deputy registrar keeps in his office just the more modern books which he needs to refer to frequently, and that really the ancient records are in all kinds of places; that he does not keep the more ancient documents?

I am not aware of that, except in the case of the vicar general's office, where, I think, they are periodically sent to Lambeth.

997. Earl *Nelson*.] I would like to ask you one question upon this. You said that the registrar was more a diocesan officer than a bishop's officer. Do you not think that, under the Bill, when he becomes also the registrar to the archdeacons, he will be still less a bishop's officer?

Yes, certainly.

998. Bishop of *Ely*.] I think you said that there would be no parallel case to the proposed plan of registrars holding during pleasure?

I am not aware of any.

999. Is it not so, that the registrars of County Courts are removable at the pleasure of the Lord Chancellor?

I cannot answer that question; but I should think that they would not be removable at the mere pleasure of the Lord Chancellor.

1000. Is it not the fact that the superintendent registrars of marriage are removable at the pleasure of the Registrar General?

That would be a totally different thing, if your Lordship will allow me to say so; there are no functions corresponding to the office of registrar, save the issue of marriage licenses, in the case you have put.

1001. No custody of documents?

They are all transmitted to the Registrar General.

1002. Lord

1002. Lord *Hatherley.*] I may remind you of the mode pointed out by statute with regard to certain officers, namely, the official assignees under the old system in bankruptcy, for instance, of removing them for cause assigned, though not at pleasure. Would you see any objection to such a course as that being taken?

No; that I think would get rid of what seems to me so objectionable.

1003. The official assignees were removable by the Lord Chancellor, for a reason to be assigned upon his order?

That would obviate the difficulty I feel, so far.

1004. Earl *Nelson.*] You stated that you consider marriage licenses civil fees, and that you think that they should be altogether separate from ecclesiastical fees; I wish you to explain to us in what way you would separate them?

That they should be separated in dealing with the matter of fees; because you will quite understand that in the discharge of what may be called ecclesiastical duties, such as institutions, and so on, those should, for instance, be subject to payment by stamp; but they are essentially purely ecclesiastical; but I see no difference between a marriage license issued by an ecclesiastical registrar and a marriage license issued by a civil registrar, except that it comes out of one room instead of out of another; and I cannot see why the ecclesiastical registrar should be mulcted in any part of that which he receives for his marriage license, when the strictly civil registrar is entitled by statute to receive the very sum which I would allow the ecclesiastical registrar. There is no comparison which you can draw save by some analogy between the discharge of other duties connected with ecclesiastical officers and any civil officer; indirectly there is the keeping of records in the registry; but there is a strict analogy with the issuing of marriage licenses.

1005. Then you would keep the fees received from the two sources distinct?

I would like to keep them distinct, if it is necessary to introduce the payment by stamps into either.

1006. And you would make the payment from those fees to different officers altogether; you would not unite them as one fund?

I should like to keep the funds different, for a reason which I can state to the Committee if they will allow me. As I understand the scheme of this Bill with respect to fees, it is to pay for duties performed; and, upon this marriage license question, I think that the Committee should be aware of the facts. In Schedule B. it is proposed to give the vicar general and official principal of the Archbishop and Province of Canterbury 500 *l.* a year; and in Schedule C. the vicar general and official principal of the Archbishop and Province of Canterbury is to discharge the duties of the commissary general of the city and diocese of Canterbury. Now, it so happens that for the marriage licenses received in the vicar general's office, the vicar general receives a sum of something between 1,300 *l.* and 1,400 *l.* in gross; out of that he has to pay the sum of 298 *l.*, which he pays to his surrogates, and the further sum of 114 *l.*, which he has to pay for land tax, for rent, and for clerks. That leaves him a net balance of 890 *l.*, in the rough, drawn only from marriage licenses. Those are duties which he performs; and I cannot see the justice of taking away from the vicar general (I am not speaking of his ecclesiastical fees, and that is why I want to keep the two distinct) out of the civil fees which he receives so large a sum as 400 *l.*; that is the difference between 500 *l.* and 900 *l.*; and, into the bargain, throwing upon him the discharge of other duties arising in respect to the city and diocese of Canterbury, because it is, in fact, taking away from him very nearly half his income derivable from this source, and the duties of which office he performs, and paying it to somebody else who does not do that duty. But there is a further objection to that. It is proposed now to give my successor 500 *l.* a year for the discharge of these duties; he is not allowed anything for surrogates that I can find in the Bill; therefore, he will have to pay his 298 *l.*; he is not allowed anything for land tax, and nothing for those expenses towards the clerks and the rent of the premises; and, in point of fact, instead of receiving a net sum of 900 *l.*, he will receive something short net of 100 *l.* a year for discharging his present duties, and those of the diocese of Canterbury into the bargain. I think that has been overlooked in the draft of the Bill, unless, which of course may be the case, I am very much mistaken in the matter.

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1007. *Chairman.*] You do not consider that the surrogates are paid by the fees which they receive?

I pay them now, and I think the provision in the Bill will not pay them; the provision in the Bill with respect to that says that the surrogate shall receive this 2 *s.* 6 *d.* and 5 *s.*

1008. Do you not consider that that is their payment under the Bill?

That they have now; but there is no provision that I see in the Bill that that shall be added to the marriage license fee. If the marriage license fee is to be raised from 2 *l.* 12 *s.* 6 *d.*, and 2 *s.* 6 *d.* added to that, making 2 *l.* 15 *s.*, then you are increasing the marriage license, which I think you ought not to do. Therefore, if the marriage license remains at 2 *l.* 12 *s.* 6 *d.*, and you take 298 *l.* at once out of that 500 *l.*, to say nothing of the other odd 100 *l.* for rent, land tax, and so on, of course you leave the vicar general nothing, and you pay other people out of his pocket for doing the duties he himself has to discharge and is responsible for.

1009. Does not the 2 *s.* 6 *d.* come out of the 30 *s.* at present?

Yes, it does; but I deduct it from that 900 *l.* The gross receipts are something like 1,400 *l.*, and then there is 400 *l.* paid out of that, of which 298 *l.* represents the 2 *s.* 6 *d.* Now the Bill proposes to pay a salary of 500 *l.*, and to leave all this burthen of 400 *l.* on the vicar general.

1010. In fact, you think that the vicar general will not be sufficiently paid?

That he will be very insufficiently paid, and moreover there is this objection to it on principle, that the money he ought to receive for duties he does will go into the pockets of other people who do not do those duties.

1011. Earl of *Powis.*] If any change took place in the marriage laws and the vicar general ceased to be allowed to give marriage licenses, his income would disappear?

If at anytime the recommendation of the Marriage Law Commissioners of 1868 is carried out and the marriage licenses are abolished, and certificates of 5 *s.* are granted, then all the church officers will have nothing.

1012. *Chairman.*] That is not an objection to this Bill?

No.

1013. Supposing the marriage licenses abolished, the whole system of the ecclesiastical registries would collapse at once?

Completely; they are sustained entirely by marriage licenses, at least almost entirely.

1014. But the objection is not an objection to the new scheme more than to the existing one?

Not at all.

1015. It is an inherent objection to the system of paying officers by collecting fees?

Yes.

1016. Do you understand the recommendation of the Marriage Law Commissioners to have been that there should be no charge of any kind whatsoever for marriage?

I think that a 5 *s.* certificate was the recommendation to supply the place of the license.

1017. No other fees to be exacted for marriage at all of any kind?

Not for the licenses; there might be a fee for the clergyman, and so on.

1018. But have you looked at the Report of the Marriage Law Commissioners?

I have only looked at this particular point, as to what was to happen in the case supposed.

1019. Do you think that if you looked at the whole of it you would think that it proposed to abolish all fees for licenses?

That I cannot answer; I have not looked at it with that view.

1020. Earl *Nelson.*] You are aware that the proposed remuneration given here in the Bill is the maximum sum; the 500 *l.* is given as a maximum sum, which might not be under the Bill attained?

Yes.

1021. Earl

1021. Earl of *Powis.*] The maximum sum being stated in this Bill for chancellors, supposing that five or six additional dioceses were created, still to be paid out of the same maximum, do you think that the remaining salary would be sufficient for efficient holders of that office?

I think that these officers discharge duties which are more simply paid by fees; they are more equitably paid by fees.

1022. Do you think that if the chancellor in a large diocese such as London, was reduced below 200 *l.* a year, you would be administering the office satisfactorily?

I should doubt very much where the man would be who would take the office then, particularly in the case of London.

1023. *Chairman.*] But what is proposed to be given under the Bill to the chancellor of London?

£. 200 on an average, each chancellor is to have.

1024. I do not think you will find that in the Bill?

What is in the Bill is in Schedule B., "the chancellor of the diocese (for each diocese except those of Canterbury and York), in all 5,200 *l.*"

1025. Then there is no statement made as to the proportion?

There is no statement made as to the proportion; that is left to those various clauses to be settled by the rules and orders.

1026. May I ask what are the emoluments of the chancellorship of Salisbury at present?

Under 100 *l.* a year; I do not know how it is, but I have seen somewhere in the returns 198 *l.*; I only wish they were; they are considerably under 100 *l.* a year.

1027. It is not impossible then to secure a man of the first eminence to be chancellor of that diocese at the present payment?

Bishop Hamilton, who was good enough to appoint me, was a man one would have been glad to have been of any use to, or to have served for nothing.

1028. Earl *Nelson.*] Are you satisfied with the remuneration clause, the 52nd clause, for the remuneration of existing officers?

I do not know whether the Committee will give me any credit for the answer which I am going to give to you, which is that I have not looked at that, and that I have not looked at this Bill at all with any respect to what I am myself now doing, or what I may get under this Bill. There is one thing which perhaps his Grace will allow me to mention. I said just now that I thought all this Bill might be worked without the Ecclesiastical Commissioners, and I think that there is in existence a part of the machinery for that, and I think that the rest of the machinery might be very easily found without any expense. The Committee is aware that under the 38th and 39th of the Queen, c. 76, which is an Act with respect to ecclesiastical fees, every ecclesiastical officer, not the Chancellor, was bound to return every year the amount of his fees to the Ecclesiastical Commissioners, and the Ecclesiastical Commissioners were enabled to prosecute, and if convicted, get a fine imposed of 20 *l.* on any person in default. Under the Bill there is to be a meeting of certain persons every year to consider rules and orders; and it occurred to me that if these returns were made, as they are to be made, on the 1st of January in each year, and the meeting under the rules and orders were to be held, say in March of each year, and the Bill is to come into operation on the 1st of July 1877, then at that meeting the rules and orders might provide for the payment (which is one of the objects of this Bill) of the provincial judge, in proportion, out of the fees which the different ecclesiastical officers receive. In that way there would be no charge for an auditor, and the other expenses of the Ecclesiastical Commissioners. I do not see that any risk of dishonesty would be incurred, and then the whole machinery could be worked by the provincial judge, and under the rules and orders of this Bill.

1029. *Chairman.*] Are you aware that that was proposed in a Bill put before Parliament last year?

I have forgotten it.

Mr. *Deane*, D.C.L., Q.C.

22nd March 1876.

1030. As far as I can understand your proposal, it is the same as was proposed in a Bill last year, and that part of the Bill was dropped?

Then with respect to the earlier part of this Bill and the amalgamation, or suppression rather, of certain offices, I must say that I think it would be a removal of something which is at all events, to the public mind, obnoxious, if any of those offices were abolished, and they were consolidated, always reserving the archedeacon's power.

1031. You have expressed an opinion of the importance of the office of the Dean of Arches and Chancellor of York held now by Lord Penzance; do you consider that that office is sufficiently remunerated by the 600 *l.* a year, or whatever it is, that is at present available for that purpose?

No, not in the sense that that is sufficient pay to give to a person who has to discharge duties of such consequence.

1032. Then you have proposed another plan by which that may be augmented, different from the one in the Bill?

As I have had the honour of stating to your Grace, I think that a person filling the office which Lord Penzance does, ought not to be paid a sum of less than 3,000 *l.* a year, and though I have an opinion as to where that 3,000 *l.* a year should be found, at the same time if it is thought right that the different ecclesiastical officers throughout the country should find the fund, it might be found without going to the Ecclesiastical Commissioners at all.

1033. Earl *Nelson.*] Do you not think it would be more just that that salary should be paid out of the fees from suitors, rather than out of the salaries of other people who are non-litigants?

I think that in the new court the fees will be less than they were in the old courts; but still I think it would be a great hardship in many cases to throw the payment upon the suitors. And there is also that, that the time may come when the number of suitors will not be sufficient to find that sum; and I think that that possibly is the strongest objection to that which your Lordship proposes.

1034. Would you mind stating to us in what way you think it could be done, because you stated that there was another way in which it could be done?

The way in which I thought, from the introduction of these Bills, the funds might be found was this: the provincial judge is essentially a person whose duty it is to keep ecclesiastical matters straight, and I have never understood why there was such an objection to go to the common fund in the hands of the Ecclesiastical Commissioners. I know there are great objections to that, but I never was able to appreciate them myself.

1035. *Chairman.*] Failing that, you think that it may fairly be charged on the general fund raised by these fees?

I think that is the next available source.

1036. Earl of *Powis.*] Do you think that that could be managed by a simple process of taxation, without absorbing all these provincial payments into a centralised fund in Whitehall-place?

I think so, and I think that the per-centage possibly might be very little in excess of the additional expense that the Ecclesiastical Commissioners would have to incur in working it.

1037. Do you think it is important ecclesiastically to keep the individuality of the dioceses and diocesan officers as distinct as possible?

I think so.

1038. Bishop of *Ely.*] Did I rightly understand you to say in the early part of your evidence that whilst you thought the tenure of the registrar should be during good behaviour, yet the bishop's secretary was an office of such a confidential character that it almost followed that he should hold office during pleasure?

I think there is that distinction between the two offices.

1039. Is your deduction from that that it is impossible to consolidate those two offices without injuring the usefulness of one or the other?

I think so.

1040. *Chairman.*]

1040. *Chairman.*] But then how is that consistent with the fact that the offices are consolidated in the persons of so many registrars and secretaries throughout the kingdom at the present moment?

I think that is a fortunate accident.

1041. Bishop of *Ely.*] Could you recommend any *via media* plan that would reconcile the discrepancies in the tenure?

I think that this has been done. I think that sometimes (I am pretty sure in one instance) the registrar, being secretary, has resigned the secretaryship, but has kept the registrarship; and I do not see why the secretary should not be removable at pleasure, if he happens to be the same person with the registrar, the registrar still holding office.

1042. Then the same person under this Bill might be appointed registrar, and in that capacity do secretary's work and registrar's work, and yet there might be such an individuality about the secretary's office that he might resign that whilst holding the registrarship still?

Resign, or for any cause satisfactory to the bishop he might be asked to give up the secretaryship.

1043. Do you think it possible so to construct the consolidated office as that it should be separable on an emergency?

I would rather not consolidate the offices. I would rather keep them separate; for convenience they might be joined. I would not join them necessarily.

1044. Earl of *Powis.*] Clause 13 says that the bishop may appoint more than one person to fill the office of registrar, and that in that case the bishop shall in the instrument of appointment apportion the duties between such persons; is that a convenient arrangement, or would it be more convenient that the apportionment of duties should be a matter of arrangement between the two persons holding the office?

That is a matter of detail. I should think that as the bishop appoints the registrar, perhaps it would be better that he should apportion the duties.

1045. And, assuming the principle of a joint appointment, would it not be a convenience in regard to the duties that either of two or more persons holding the office should perform any portion of the duties?

That may be so. I am not quite aware of the object of the clause, but I thought that in a long diocese like Exeter it might be desirable to have a registrar at Exeter, and another somewhere down in Cornwall; that struck me as one of the objects of that clause.

1046. In cases of illness or absence, might it not be for convenience if one joint registrar might act for the other?

Yes, certainly it would be most convenient that they should; but then that difficulty would arise if there were only one registrar; then I think that is provided for in the Bill, which says that in event of illness a deputy may be appointed.

1047. Do you see any advantage in the duties being absolutely divided, as proposed by this clause?

None, save in the case which I have suggested: in the case of a long diocese like Exeter, where it might be desirable to have a registrar in Cornwall and another in Devonshire.

1048. Would it be easy to define in the instrument of appointment the duties to be performed precisely by No. 1 or No. 2.

I think so, in that diocese, for instance.

The Witness is directed to withdraw.

MR. JOHN MARRIOTT DAVENPORT, having been called in, is Examined, as follows:

Mr. *Davenport.*
22nd March 1876.

1049. *Chairman.*] You are Secretary to the Bishop of Oxford?
I am.

1050. And Deputy Registrar of the Diocese of Oxford.
Yes.

1051. Who is the registrar?
The Rev. Charles Walter Bagot is the registrar in possession, and his brother is a reversioner registrar.

1052. These gentlemen do not perform their duties personally?
No.

1053. And never have?
And never have.

1054. And never will?
No.

1055. Do you think that a desirable state of things?
Certainly not.

1056. Then some legislation would be necessary to put an end to that if it were thought undesirable?
It would.

1057. Have you the custody of all the papers?
I have.

1058. Are you removable by the bishop or by Mr. Bagot?
By Mr. Bagot. I was appointed by Mr. Bagot.

1059. Viscount *Halifax.*] You hold your office under him during his pleasure?
Yes, *quà* registrar.

1060. *Chairman.*] In fact, you hold your office of deputy registrar at the pleasure of Mr. Bagot, and your office of secretary at the pleasure of the bishop?
I do.

1061. And no inconvenience has arisen in the diocese of Oxford in consequence, that you are aware?
No.

1062. There is a building at Oxford which is the registry, is there not?
There is.

1063. Whose property is that?
The building, *per se*, was given by a clergyman, Mr. Greswell. I fitted it up, and also paid the expense of an office for business as well. I spent about 1,200 *l.* personally.

1064. Whose property do you consider it to be?
I made a conveyance of it, vesting it in the chancellor of the diocese for the time being. But its validity may be questionable, under the Statute of Mortmain.

1065. Do you mean that the chancellor has no power of holding landed property?
Yes.

1066. *Lord Steward.*] That does not bear upon the Statute of Mortmain?
Yes, because it is conveyed to him corporately and his successors.

1067. *Chairman.*]

1067. *Chairman.*] However, we need not discuss that? Practically, the conveyance will never be impugned.

1068. Then the documents are all kept there, are they? They are all kept there excepting the current documents.

1069. And where are they? In my office; an office exclusively for the diocesan business.

1070. Do you consider, then, that there is any great disadvantage in the office of registrar being held at pleasure; you are perhaps the last person in the world to think so? Practically, I do not think there is any inconvenience; I think in theory it is wrong.

1071. It would be better, you think, if you had the office in perpetuity? I think every freehold office commands more respect.

1072. But, at the same time, you would not propose to retain the present system of it being a *quasi* freehold capable of transmission from one person to another? Certainly not.

1073. So that legislation would be necessary as to the tenure of the registrar's office, you think? It would be necessary to prevent the office being held as a sinecure in future.

1074. Doctor Deane was of opinion that you might trust public opinion on that subject; is that your view? I should think such appointments would scarcely be ventured upon in future. I have committed some notes to paper if I may read them.

1075. Before you do so I will ask you this. You were chairman, I think, of a meeting of registrars which was held with reference to this Bill? I was.

1076. So that you may be supposed to represent the opinions of many of your brethren? I do so, very humbly.

1077. *Lord Steward.*] Do you mean registrars or deputy registrars? Registrars; there are very few deputy registrars now. (*The Witness then read the Notes, as follows*:) The gist of the measure, as expressed at page 2, is "to abolish certain ecclesiastical offices, and to subject such offices as may be retained to certain regulations and alterations, and to regulate ecclesiastical fees." No future office of secretary of a bishop is to exist *eo nomine*. The meaning of Section 6 is obscure. As regards the office of "secretary"; what jurisdiction would the section transfer to the Chancellor? As to Sections 10 and 12, it is observable that no respect is paid to those who (in some instances for a long series of years) have virtually been the registrars of a diocese, doing the whole of the registrarial work as deputies of a sinecure registrar, and consequently not enjoying the whole income of the office.

1078. *Chairman.*] Then you are of opinion that it would be desirable to introduce some clause to secure that persons in your own position should be compensated quite as much as if they had been the real registrars? Should be compensated by the Bill as having a vested interest. Great hardship might be experienced by a deputy being superseded when he had devoted himself to the duties of the office to the prejudice of miscellaneous professional work, and perhaps become disqualified for engaging in or resuming such work. And the reduction, by Section 12, of the canonical and freehold office of registrar, to one *durante bene placito*, is a matter of very grave import. Hitherto it has been to the holder an incorporeal hereditament, and a temporal office, although the *subjectum circa quod* is spiritual, and therefore carrying with it all the privileges, incidents, and status of a public office in the old constitutional sense of the word, and irrevocable during good behaviour. On the other hand, the office of secretary of a bishop is of modern creation, being first mentioned in the Statute Book towards the end of the reign of George the Third, and is simply a personal and conventional office; whereas if the union of the offices of registrar and secretary, enacted by Schedule C., take place, there would be

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be no security for the permanency of their tenure, none of the prestige with which a freehold office has always been clothed, and an absence, possibly, of the pride a permanent officer, as a rule, has in the maintenance of the character of his office by the exemplary manner in which he performs its duties. Moreover, a highly qualified man will take an office whose tenure is permanent, which he would reject if he were subject at any time to dismissal. Viewed, however, in the light of the bishops, it is freely admitted that their Lordships ought not to be subject to have imposed upon them, in respect of the personal and confidential office of secretary, the services of any one displeasing to them ; so that it is difficult to suggest a way of escape from this without altering the framework of the Bill, and retaining as several, the offices of registrar and secretary. In Section 14, the meaning of "confirmation" is not explicit. Section 15 points to indefinite extra duties without extra remuneration, in a manner believed to be unprecedented in legislation. The same observation applies to Section 40, sub-clauses 1 and 3. As to Section 23 *et seq.*, the registrars, as a body, respectfully object to be venders of and accountable for stamps, and suggest that the Inland Revenue Offices are the proper *media*, as in the case of the district registries of the Court of Probate. Section 32 and Schedule B., and Section 35: having regard to the duties, present and prospective, the salaries proposed are manifestly inadequate. The importance of attracting to the offices of registrar and secretary professional persons of honour, independence, and education, cannot be overrated, and inadequate remuneration would not command such men. The duties of a well-ordered registrar, and more especially of an effective secretary, are such as cannot be described on paper, and they do not meet the eye; but the clergy of a diocese could testify that they receive an untold amount of gratuitous legal aid in difficulties, sparing them the cost of private professional assistance. Section 40, sub-clauses 1 and 3, have already been alluded to. It is respectfully suggested that sub-clause 2 and Section 54 should be amplified to the following effect: (*a*) To indemnify such registrars and deputy registrars as have, at their own cost, provided public or *quasi*-public muniment rooms or registries for their dioceses, where no depositories previously existed, this being especially the case in the post-Reformation dioceses; and (*b*) to enact that all records and entries and documents from the earliest date, and tithe commutation plans, &c., having exclusive reference to any parish or place abstracted, under the Act of William the Fourth, from any one diocese, and added to another diocese, shall be removed from the registry of the former to that of the latter. Passing to Section 42, it is humbly submitted that it calls for the most serious consideration of my Lords. The expense, to a diocesan registrar, of organising a visitation, and travelling the circuit of it, with assistant clerks, is very serious; and this expense is not provided for. But higher interests than mere secular ones are involved in the machinery proposed by this section—a machinery ineffectual to revive the true genius of visitations, at which there ought to be the valuable lay element of an influential gathering of the heads of the Church, with her clergy on the one hand and the lay officers of the church of every parish on the other—gatherings which, by tradition, and the habits of Englishmen, do more to engender and maintain good Church feelings on the part of the people than any which could be devised; and therefore it is submitted that the visitations should be preserved and cherished with all their old array, and that the expenses (on a proper and adequate scale) of the legal forms and proceedings incidental to them, might, with permanent advantage to the Church, be borne out of the fund at the disposal of the Ecclesiastical Commissioners. And it is further submitted that any person who shall act or assume to act as a churchwarden until duly admitted into office, shall be guilty of a misdemeanor. As to Section 44, it is submitted that respect might be paid to the present deputy and acting registrars already alluded to, by expressly including them within the category of this section. And the like submission is made with regard to Section 52. The date of appointment to office prescribed by Section 53 is too remote to be applicable. As to Section 61 it is respectfully submitted that the words "or who held, within seven years previously thereto," should be introduced in each instance after the words "at the passing of this Act."

1079. *Chairman.*] You have not proposed any plan by which visitations are to be paid for other than by fees?

No, I have not.

1080. On

1080. On whom do the expenses of a visitation at present fall?
In the diocese of Oxford we have not come down to such a small receipt of fees as not to indemnify the registrar for the expenses.

1081. But I suppose the expense of a visitation to a bishop is always very considerable, is it not?
No, it is not.

1082. My experience is that my last visitation cost me 400 *l.*?
I am surprised to hear it. Until within the last four years we used to take advantage of the visitation as a good opportunity of receiving the procurations and synodals, and they compensated the bishop. Now, the Bishop of Oxford declines to receive them.

1083. Earl of *Powis.*] Do the archdeacons receive any procurations or synodals in the diocese of Oxford?
They do.

1084. Are the amounts the same in each parish, or do they vary?
They vary.

1085. Can you mention what sort of amounts they are?
Eight shillings and nine shillings, and some a little larger, and many smaller. They are all ancient fees; they have not been varied for centuries.

1086. Who pay the procurations and synodals; the clergy or the churchwardens?
The clergy.

1087. Do the lay impropriators pay them as well, or lay rectors?
Not any.

1088. Viscount *Halifax.*] Are they not rather a charge upon the great tithes than upon the individual clergyman?
I never had to apply to a lay impropriator for either procurations or synodals. I am certain I can state that no lay rector in the Diocese of Oxford has paid directly.

1089. Earl of *Powis.*] What is your opinion as to a churchwarden being obliged to write to the registrar and get a stamp from him before he can be admitted churchwarden?
I do not think it would work well.

1090. Do you think you will have many legally appointed churchwardens in five years under that provision?
No.

1091. Do you think it desirable to throw any additional trouble on persons who are willing to undertake the disagreeable office of churchwarden?
Most undesirable to do so.

1092. *Lord Steward.*] I gather from what you have stated that you consider visitations, both the bishop's and the archdeacon's, exercise a very direct and beneficial influence upon the laity as well as the clergy?
I am certain that in an agricultural diocese, such as Oxford, the amount of good Church feeling it creates is untold.

1093. Disputes are composed then which might reach a more serious stage, and many differences are settled by the intervention of the archdeacon which might otherwise become matters of litigation?
Constantly that is the case both with the archdeacon and the bishop.

1094. Then you think that if the plan were adopted of admitting the churchwarden by a rural dean or at vestry of the parish, a good many of the advantages now derived would be lost?
I do.

1095. Do you think that the objection to the payment of fees would be in any way lessened by their being paid by the medium of stamps?
I think it would be regarded as vexatious.

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1096. You increase an existing difficulty and remove none?
I think so.

1097. Viscount *Halifax.*] Would it not entail additional trouble upon the incoming churchwarden to have previously to get the stamp rather than to pay the money at once?
It would.

1098. Earl of *Powis.*] Is the fee paid by churchwardens in the diocese of Oxford uniform in every parish?
Certainly; it is under a statutory scale.

1099. And what is the amount?
It is 12 *s.* 6 *d.* to the registrar, and 3 *s.* 6 *d.* to the apparitor.

1100. Bishop of *Ely.*] Do you believe that the churchwardens would attend the visitations if they were admitted at vestries?
I believe they would avoid attending as much as possible.

1101. *Lord Steward.*] You stated that the Bishop of Oxford refused to receive procurations and synodals?
Yes.

1102. In consequence of a recent demand made by the Ecclesiastical Commissioners, his functions would have merely consisted of receiving them, collecting, and handing them over to the Ecclesiastical Commissioners?
Yes.

1103. And he declined to undertake that work for the Ecclesiastical Commissioners?
He did.

1104. And do you know whether other bishops have taken the same course; the Bishop of Ripon, for instance?
I do not.

1105. Earl *Stanhope.*] Do you know any similar case to what exists in your diocese of a registrar who holds his patent with two further successive lives in the patent?
I doubt if any such case survives now; but there have been many cases.

1106. *Chairman.*] Do you happen to know whether it is the case in the Faculty Office of Canterbury?
No, I do not. May I say that I think Lord Hatherley's suggestion of the removal of the registrar being only "for cause assigned" would very much remove the objections which we feel about the words "at pleasure."

1107. You mean as to the tenure of the office?
Yes. Then Doctor Deane in his evidence, being asked whether the registrar satisfied the law by appointing a deputy, his answer was, that the registrar might be impeachable for not personally performing the duties of the office he had undertaken. Now I apprehend Doctor Deane to be incorrect; for, *qui facit per alienum facit per se*; and a registrar, like any other freehold ministerial officer would satisfy the law by appointing a deputy. If that deputy misbehaved himself the registrar would be responsible.

1108. Lord *Hatherley.*] Doctor Deane spoke of that as being a *quasi* judicial office; is that your view of it?
I marvelled at that statement of his; it is purely a ministerial office, in my view.

1109. If it were judicial it would be impossible to appoint a deputy?
Yes.

1110. Bishop of *Ely.*] The office of registrar is not, in your opinion, a *quasi* judicial office?
It is not.

1111. But a purely ministerial office?
Certainly.

The Witness is directed to withdraw.

The Venerable ARCHDEACON PREST, having been called in, is Examined, as follows:

Ven. Archdeacon *Prest.*

22nd March 1876.

1112. *Chairman.*] YOU are the first Witness that we have had from the northern province, I think, and of course the practice may be different in the northern province from the southern. You have heard all the evidence of Dr. Deane and Mr. Davenport. Is there anything that strikes you as desirable to say in reference to the northern province as different from the southern province?

I can speak, of course, as to the visitation of the archdeacon in the north. I have now been 14 years archdeacon. The custom of the attendance of churchwardens varies very much indeed from what has been stated by Dr. Deane. From 156 parishes in my own archdeaconry of Durham, only 63 parishes sent their churchwardens last year to my visitation, although that visitation was held in four different parts of my archdeaconry, in order to accommodate the churchwardens and save them the expense of travelling; 93 parishes omitted to appear, and 93 parishes of course omitted to pay fees.

1113. Did all who appeared pay?

Not quite all. Of those who appeared several pleaded poverty, and on that account the fees were remitted.

1114. And none paid who did not appear?

None paid who did not appear.

1115. Do you suppose that they were kept away by the fear of the fees?

I know they were, and also by the cost of the travelling.

1116. What do you consider the fee to be?

The fee paid is 18 *s.*, which includes the payment of 2 *s.* collected at the visitation, but paid to the diocesan deputy registrar for filing transcripts of parish registries.

1117. Then do you think that the attendance of the churchwardens would be increased by abolishing the fee?

I am not able to say that, but I am not one who think the attendance of the churchwardens essential at my visitations. My own experience shows me that their attendance is merely perfunctory; they are admitted, and leave the room with scarcely any conversation with the archdeacon; in a few instances questions may be put to him, but either ours is a very pacific diocese, or they do not choose to ask my advice on the matter at that time; the result is, that very few churchwardens ask any questions of importance. They avail themselves frequently of the opportunity of writing to me in the course of the year, but on the day of visitation nothing more is done than the simple admission of those churchwardens to office who appear.

1118. Is there any hospitable entertainment?

There is no hospitality shown to the churchwardens.

1119. Only to the clergy?

The clergy in my archdeaconry attend on a separate day; the archdeacon has the pleasure of acting as host to all those who attend, and they attend very largely.

1120. To that there is no inducement to the churchwarden to attend except to pay his fee?

Nothing, unless he should have a case of importance to bring before the archdeacon.

1121. Then do you consider that the others are properly admitted to their office?

The others are either not admitted at all, or they are admitted by a surrogate. They go to the nearest surrogate, and are admitted by him without any payment; they sign the declaration before him, and make no payment.

Ven. Archdeacon *Prest.*

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1122. Then, in point of fact, if you propose to give up the fee, it would simply be because you cannot collect it?
It would not only be so; but because I think that the attendance of churchwardens, so far as my experience goes, has not tended to profit in any way.

1123. Lord *Hatherley.*] They do not attend as well as the clergy in your archdeaconry?
No.

1124. Therefore many of the advantages which we have had pointed out could not be enjoyed by them?
No.

1125. Lord *Winmarleigh.*] Do you address churchwardens at all?
No.

1126. *Chairman.*] There is nothing for them to do except to be admitted, and pay the fees?
No, I am afraid no inducement of an address would suffice to bring them.

1127. Viscount *Halifax.*] Does your archdeaconry include the whole county of Durham?
With the exception of 37 parishes which are in the officialty of the dean and chapter.

1128. Bishop of *Ely.*] Your visitations last two days at Easter time, one for the churchwardens and one for the clergy; is that so?
The clergy come to Durham alone; but I go to four different centres to admit churchwardens.

1129. Do you have a service or anything for them?
No, not for the churchwardens.

1130. In fact, nothing is done for the churchwardens?
Nothing but the formal admission to office.

1131. Earl of *Powis.*] Do you deliver a charge to the clergy?
To the clergy I do.

1132. And does one day comprise the whole for the clergy?
Yes.

1133. *Chairman.*] But the churchwardens you meet in various places?
At four centres.

1134. Lord *Winmarleigh.*] Is it the custom of the archdeacon not to have conversation with the churchwardens on these occasions?
There is not an address; but the visitation articles are presented, and the archdeacon receives them, and if anything arises out of the articles presented he speaks to the churchwardens upon the subject, nothing more.

1135. *Chairman.*] Do you receive these articles from the churchwardens who do not attend, as well as from the others?
Yes, by post.

1136. You could communicate with them all by writing?
Yes.

1137. Viscount *Halifax.*] Is that habit of having churchwardens and clergy on different days peculiar to the diocese of Durham, or does it extend throughout the northern province?
It extends to the Archdeaconry of Northumberland, but not to that of Lindisfarne; there are three archdeaconries.

1138. That has been a continuous old custom?
I have made inquiry, and find that it has been so.

1139. I suppose Lindisfarne is the northern archdeaconry?
It is.

1140. *Chairman.*] Have you read the Bill?
Yes.

1141. Is

1141. Is there anything which occurs to you with reference to it?
The only matter which seems to me of importance is, that it does not seem to be sufficiently defined that the new registrar shall discharge the duties of the registrar of the archdeaconry.

Ven. Archdeacon *Prest.*
22nd March 1876.

1142. You do not object to the general provisions of the Bill?
Not to any provisions of the Bill; they seem to me to be very good. Perhaps I may mention with respect to procurations and synodals that I gave them up six years ago; they have not been collected in my own archdeaconry for the last six years. The clergy objected very much to have these fines, and the amount was so small that I thought it right to give them up.

1143. Earl of *Powis.*] Is your archdeaconry one that is endowed by a stall?
It is; it is endowed by a stall, and has in addition 200*l.* a year.

1144. *Chairman.*] You are rector of Gateshead?
I am rector of Gateshead.

1145. Do you issue marriage licenses?
Yes; I am a surrogate, and therefore I do.

1146. And receive what sum?
£.2. 12*s.* 6*d.* for each.

1147. Earl of *Powis.*] How is that divided between the Government stamps and the various officials?
Seventeen shillings and sixpence is my own fee; I do not know where the rest goes to.

1148. To whom do you transmit the rest?
To the proctor, who supplies me with licenses.

1149. *Chairman.*] Do you think that the plan of stamps for everything would be attended with inconvenience; for instance, in the admission of churchwardens?
I do not; I think that many more churchwardens would be formally admitted to office if the admission were simply confined to that which is proposed in the Bill, namely, the signing of declarations on a 5*s.* stamp. At present I am satisfied that a large number of churchwardens in my own archdeaconry are not legally admitted to office, and my belief is that if they were to sue, the opponent could plead successfully that they were not legally churchwardens.

1150. And you think that the plan of substituting stamps would do good?
I think it would do good. The fee is so small by comparison with the 18*s.*, plus the cost of travelling expenses now imposed upon all those who wish to be legally admitted, that I am satisfied in a large part of my own archdeaconry the churchwardens would pay the fee, and if that were called a legal admission would avail themselves of it.

1151. That is if it were given in the vestry?
If it were given in the vestry, or even before some neighbouring surrogate; but that is, supposing they were saved the cost, both in time and money, involved in the journey and the payment of the fees.

1152. Bishop of *Ely.*] What is the average distance that the churchwardens would have to come to one of your centres?
I think 14 miles; that is, reckoning both journeys; but it is somewhat hard to say.

1153. *Chairman.*] You differ very much. You are aware from your brother archdeacons, all of whom seem to think it of great importance, that the churchwardens should come to the visitations?
I heard what they said in more than one conference; but the circumstances of their cases were frequently somewhat different from my own. In many cases their clergy and churchwardens meet at the same time. With respect to the marriage licenses, I am satisfied that the fee at present is so large as to deter a very considerable number of persons from taking out licenses; many persons would be glad to do so who dislike the publicity of banns, and dislike still more the payment at the registrar's office, and if the gross payment for a marriage license were reduced, and especially if more persons were empowered to issue them, I am quite satisfied that licenses would be more largely used.

Ven. Archdeacon *Prest.*

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1154. Then you approve of that clause in the Bill, reducing the payment to the surrogate to 5 *s.*?
I do.

1155. Earl of *Powis.*] Do you think that the payment of 5 *s.* would be sufficient to make the clergy generally undertake the responsibility of acting as surrogates?
I think so. The responsibility is somewhat great, but the trouble is very small. In nine cases out of ten there is no reason why the clergyman should question the statements made, and in most cases he is able to ascertain the true facts very easily.

1156. *Chairman.*] You, in fact, think legislation necessary in this matter?
I think it is.

1157. And that the proposed legislation is good?
So far as I understand the Bill, I should be very glad to see it pass.

1158. Is there anything further that you wish to say?
Nothing more.

The Witness is directed to withdraw.

The Reverend WILLIAM BOYD, called in; and Examined, as follows:

Rev. *W. Boyd.*

1159. *Chairman.*] You are also from the Northern Province?
The Diocese of Ripon.

1160. Do you hold the office of a surrogate?
No.

1161. You are here rather to represent the feelings of the parochial clergy as to these things, are you not?
I am official to the Archdeacon of Craven, in the Diocese of Ripon.

1162. The office of official to the archdeacon is similar to that of chancellor to the bishop?
Yes.

1163. Have you any duties to perform?
Yes, I attend the visitations of the archdeacon, and in the visitations of the bishop I act ordinarily for the chancellor.

1164. Is it your opinion that the churchwardens ought to be admitted at the visitation of the archdeacon?
Yes.

1165. You think it is a good thing that there should be an inducement to them to attend the visitation?
Yes.

1166. And that much useful converse takes place between the archdeacon and the laity on those occasions?
Yes, my experience is quite different from that of Archdeacon Prest. There are about 400 parishes in the archdeaconry, and I do not think that there are six or 10 cases where the fees have not been paid on the last visitation.

1167. Is it a fee of 18 *s.*?
Twelve shillings and sixpence.

1168. Why is it 12 *s.* 6 *d.*?
It was 12 *s.* 6 *d.* before the new Act was passed, and it was never raised.

1169. There seems to be quite a pleasure, then, in paying fees there?
We have very little difficulty indeed; and we have a very kindly feeling on the part of the churchwardens when they come.

1170. Do

1170. Do you suppose they pay them out of their own pockets?
No, they get them from their parishes.

1171. And where there are no church rates, where do the funds come from?
There are always some funds available in every parish.

1171.* You think the amounts are recoverable from the parishes?
Yes.

1172. Bishop of *Ely.*] Are the church funds, which you think exist, derived from collections or endowments?
Ordinarily, from collections.

1173. *Chairman.*] Made at the offertory?
Not ordinarily; in many of our parishes we collect a rate, and in others it is collected voluntarily; but in some cases it is from collections in the church.

1174. Then it would be quite a boon to the people in your part of the world to be charged 5 *s.*?
Yes.

1175. And they would not be particular as to whether that was paid by stamps or otherwise?
No.

1176. Do you suppose, from your knowledge of the parochial clergy, that they feel the fees press upon them; the fees of institution, and ordination, and licensing of curates, and so on?
I think they always say so.

1177. But do you consider that they are oppressive?
I think in some cases they are.

1178. Do you think there is any confusion generally between the stamp paid to Government and the rest of the fee?
I think that is a very important point; it is not distinguishable by the clergy, and it is very desirable that it should be more accurately known where the fees go to. One objection that the churchwardens make is, that they do not know where the fee goes to.

1179. But would they know any more if they paid it in stamps?
No; but I think, as your Grace said, it might be explained to them on the receipt.

1180. If you were asked whether it was better to remit the fees payable by the churchwardens, or some of the fees payable by the clergy, which should you think most for the good of the church?
The clergy are so badly paid as a rule, that I think the fees of the clergy should be remitted; the fees of the churchwardens come from the parishes.

1181. Is there anything which strikes you in connection with this Bill?
I think one thing is, that it might have the effect of doing away with visitations, which I think would be much to be regretted.

1182. Do you think it would do away with visitations?
I think that the churchwardens need not necessarily go to the visitations if this Bill is carried out.

1183. Have you read the Bill as it stands, in which they are required to attend?
As I understood it, I thought it meant that they might attend.

1184. They would be admitted to visitations, I think you will find the Bill provides?
I was not aware of that.

1185. Bishop of *Ely.*] It is a custom, is it not, in the diocese of Ripon, that churchwardens may be, and are, admitted by a surrogate in exceptional cases?
Yes; there is a fee payable with that; 1 *s.* 6 *d.*

 1186. *Chairman.*]

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1186. *Chairman.*] As the Bill stands, the only difference between the present system and the new system is this, that the fee would be 5 *s.* instead of being 16 *s.* or 12 *s.* ?
Yes.

1187. You do not think that would destroy visitations, do you?
No, I do not; but if the churchwardens are to be admitted at the vestry, then, I think, they would not attend at the visitations.

1188. That was in the original draft of the Bill, but is not in the Bill now?
No.

1189. Is there any other objection to the Bill that strikes you. As to this collection by stamps, what do you say?
I see no objection to that.

1190. As to the amalgamation of offices?
I see no great objection to that; but, in our ordinary visitations, when the registrar attends and myself he is always obliged to have a clerk. I think the registrar is very badly paid in the diocese of Ripon.

1191. You have heard what was said as to the payment of the Judge of the Arches?
Partly.

1192. Is there a feeling among the clergy in your neighbourhood adverse to any of the fees going to the payment of the judge?
I think there is.

1193. Do you know on what ground?
No, I am not prepared to say.

1194. Perhaps the office of the judge is not very popular?
No, I think not.

1195. That is probably the only ground of the objection?
Yes.

1196. Earl of *Powis.*] Is the appointment of official to the archdeacon peculiar to your diocese?
I do not think so.

1197. Are you principal surrogate, or what are the duties of the official?
I act for the archdeacon in his visitations; with regard to the admission of churchwardens, every churchwarden makes his affirmation to me.

1198. And do the churchwardens and the clergy attend on the same day?
In the archdeacon's visitations, not always in the bishop's.

1199. *Lord Steward.*] I understood you to say that the archdeacon's registrar in your archdeaconry was not sufficiently remunerated?
I think so.

1200. Do you think that that difficulty would be removed by uniting the office of archdeacon's registrar with that of a diocesan registrar?
Not necessarily; there would be more work coming on him, and the question is how much.

1201. Do you think that if the registrar is appointed by the bishop, and removable at the bishop's pleasure, the archdeacon would be able to consult him as freely and get as much advice from him as he would now?
I think not.

1202. Partly because he would not be an officer of his own choosing, and also because he would be appointed by the bishop, and would have the bishop's work to do in addition to the work of the archdeacon?
Yes.

1203. In reference to the registrar, it is proposed in the Bill that the registrar should hold office at the pleasure of the bishop; do you think that would be an advantageous arrangement?

No,

No, I do not; I do not think you would have the same choice of registrars; I do not think the registrars would like it.

1204. You would not get so able a man to undertake work, which is not, after all, very highly paid, unless he had that feeling of security and independence which a permanent appointment gives; that is your view?
Yes.

1205. *Chairman.*] Who is registrar of your archdeaconry?
Mr. Teale.

1206. Is it a freehold?
Yes.

1207. Does he do his duty personally?
Yes.

1208. Who is registrar of the diocese of Ripon?
Mr. Wise.

1209. And he performs the duties himself personally, does he?
Yes, I understand so.

1210. Was the registrar of the archdeaconry appointed by the archdeacon?
I think not; the existing archdeacon has only been in office a year, Dr. Ryan; and I think Mr. Teale holds his old appointment.

1211. Earl of *Powis.*] Would your own appointment as official become vacant if there were a change of archdeacons?
That has just happened, and there was a question whether it should become vacant or not; and it was ruled that, to avoid difficulty, I should have a fresh appointment under the present archdeacon. The opinion was that it was a freehold, but it was advised to make it a fresh appointment.

1212. Bishop of *Ely.*] Are there many country parishes in the archdeaconry in which you act as official?
A good many.

1213. And is the willingness to pay the churchwardens' fees equally found in the purely country parishes as it is in the manufacturing districts?
No; the fee is much more readily paid in the manufacturing districts.

1214. Do you account for that by the fact of their getting collections at the churches?
No; but rather from the fact that they understand better what payments are for.

1215. Then the willingness to pay depends a good deal upon the social status and intelligence of the churchwardens?
I think so.

1216. Viscount *Halifax.*] Are not the churchwardens in the manufacturing districts a much higher class than they are in the country parishes?
Yes, perhaps so; because in the country places there are not many to choose out of, and, of course, they are not so intelligent.

1217. Bishop of *Ely.* Do you know, as a fact, whether they do reimburse themselves out of collections, and so on?
Yes, they do; in the case of the parishes I am cognisant of they do, certainly.

1218. *Chairman.*] You do not think it undesirable that the same person should be registrar of the diocese and of the archdeaconry?
No, I see no objection, if the work can be done.

1219. Mr. Wise, for example, does it, does he not; he is registrar of the other archdeaconry, that of Richmond, and also of the diocese?
I am not quite prepared to say.

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1220. Viscount *Halifax.*] Is not Mr. Wise a solicitor, resident at Ripon; and is he not the registrar of the diocese of Ripon, and also of the archdeaconry of Richmond?
I think it is so.

1221. *Chairman.*] Is he not also secretary to the Bishop of Ripon?
Yes.

1222. So that he unites these various offices?
Yes.

1223. Is there any other point you wish to speak of?
I do not think so. I may add that I think our archdeacon ordinarily addresses both the clergy and churchwardens, and I think it is very much to be desired.

1224. Lord *Winmarleigh.*] What are the peculiar advantages that you think arise from that?
It brings the laity and clergy together, which, I think, is a great advantage.

1225. Have you not found that it also tends to the increase of voluntary church rates?
Yes; and in some of our meetings we dine together; the clergy, with the archdeacon, invite the churchwardens.

1226. It tends to create a good feeling between laity and clergy?
Yes.

1227. *Chairman.*] Then, on the whole, you approve of this Bill?
I do in many respects, but certainly not in all.

1228. Have you any other remarks to make?
No.

The Witness is directed to withdraw.

The Venerable Archdeacon KAYE, having been called in; is Examined, as follows:

The Venerable Archdeacon *Kaye.*

1229. *Chairman.*] You are Archdeacon of Lincoln?
Yes.

1230. You have heard all that has passed to-day?
Yes.

1231. We have been looking to you to explain something about procurations and synodals, which the Committee are a little in the dark about. Can you give us some information on the subject?
The first point that I was anxious to draw your Grace's attention to, and that of the Committee, is the effect which the abolition of procurations and synodals, supposing them to be abolished under the Bill, would have upon the common fund of the Ecclesiastical Commissioners.

1232. Would you mind telling us, first, what they are? What is the procuration fee?
The procuration fee is generally considered to represent an ancient composition by which the rectors were exempted from bearing the travelling expenses of the visitor, whether the bishop or the archdeacon, and those of his retinue, when he went personally from parish to parish. It is a composition payable when the visitor, instead of visiting each parish separately, meets the representatives of a certain number of parishes at certain principal towns of the diocese.

1233. Viscount *Halifax.*] By whom are these procuration fees payable?
They are payable by the rectors, both lay and clerical.

1234. Are they payable by vicars too?
I think in certain cases they are, where the vicars receive the tithes.

1235. Where

1235. Where the vicars receive small tithes, procuration fees are payable by them?

I think so; but I speak there somewhat doubtfully.

1236. Lord *Winmarleigh*.] Could you tell us why they are called procuration fees?

I imagine it is simply from their procuring what is necessary for the sustentation of the visitor on his visitation.

1237. Viscount *Halifax*.] What is a synodal?

The synodal I believe to be a very ancient payment from the clergy to the bishop of the diocese, payable at the time when he held the annual synod; and when the bishops in ancient times found it convenient to preside over their synods by deputy, that is, by the archdeacons, the archdeacons were allowed to receive that payment which originally was payable only to the bishop.

1238. Upon whom is that fee chargeable?

Upon rectors and vicars too, I believe.

1239. *Lord Steward*.] Is the synodal a fee separate from procuration?

Quite separate.

1240. *Chairman*.] Is it not payable by the lay rector as well as the clerical?

I am not quite certain.

1241. Bishop of *Ely*.] There is one other about which I will ask you. What is a pentecostal?

A pentecostal is a payment which was paid by each family in the diocese at Whit-Sunday to the cathedral church as to the mother church.

1242. Who receives it now?

My impression is that it is still payable to the dean and chapter as the mother church, though not directly from the original source.

1243. *Chairman*.] We now know what procurations are. You wish, as I gather, to make a statement as to the serious loss there might be to the funds of the Ecclesiastical Commissioners from their abolition?

Yes; arguing in this way, that if the sum from that source throughout all the dioceses of England and Wales bears the same proportion to the number of parishes, which the amount I myself receive in the Archdeaconry of Lincoln upon 500 parishes bears to that number, then it would seem that the charge in the way of compensation to archdeacons would not be less than between 4,000 *l.* and 5,000 *l.* a year. I am assuming that the proportion is the same. In my own archdeaconry I have 500 parishes; it is about to be divided at the present time; but up to the present moment I have 500 parishes, and the amount payable to myself from procurations and synodals together is 237 *l.*

1244. And is that received?

About half; the truth is, I have no doubt I could have received much more, but I have not liked to press the point very much; and in the case of lay rectors, where the impropriate property has been sub-divided, as it often has been by sale, it is very difficult to say which party is responsible.

1245. Your archdeaconry is not endowed with a stall?

Not necessarily with a stall.

1246. You hold a stall; but that is accidental?

Not quite accidental; it must be given by the Act of Parliament to one of the two archdeacons, either of Lincoln or Stowe.

1247. It has been represented that this Bill, while it indemnifies archdeacons whose incomes are under 200 *l.* a year, would press heavily upon those archdeacons who have a larger income; have you looked into that?

Yes, I have; and I will explain it at once as regards myself, or at least as regards any successor of mine. My income as archdeacon, if I received all that I am entitled to, would be very nearly 300 *l.* a year. If procurations and synodals were abolished under the Bill, and my successor held the canonry, the canonry would then have to bear those charges which now are payable out of the separate income of the archdeaconry.

The Venerable Archdeacon *Kaye.*

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1248. Viscount *Halifax.*] Can you give us any notion of the highest sum paid for any procuration fee?
Fluctuating from 6 *s.* to 10 *s.*, I should say.

1249. *Chairman.*] There are archdeaconries that are of more value than 200 *l.* a year?
Yes.

1250. Not endowed with stalls?
I should think there were very few, if any.

1251. Are you cognisant of the case of the Archdeaconry of Ely?
No.

1252. Or of Archdeacon Mildmay's case, in a portion of Essex?
No.

1253. Or Archdeacon Dennison, in Taunton. These are cases, as I understand, of archdeacons who have more than 200 *l.* a year. The removal of the procurations, it is said, would reduce their income. The Commissioners are only authorised by the Bill to raise archdeaconries to 200 *l.* a year, and therefore they say that they would suffer loss; have you any knowledge of these cases?
No, I have not.

1254. Did you attend the meeting of archdeacons in London the other day?
Yes, I was present.

1255. That subject was not mentioned?
I do not remember to have heard it mentioned.

1256. You attach great importance to the presence of the churchwardens at your visitations?
Very great indeed.

1257. And they do attend?
Very well indeed.

1258. And do they pay?
I should imagine that within the last year or two not more than a third have paid the fees.

1259. Though they attend?
They attend. From the moment a difficulty arose I was very anxious to impress upon them that it should not be a money question; but that whether they paid or not, I was anxious to get them together on such an occasion, to which I attach great importance.

1260. Do you think they would pay better if it were a stamp?
I do not think that a change in regard to the mode in which the money is raised would make very much difference.

1261. Do you think it just, then, that they should be relieved of payment altogether?
I am decidedly of opinion that, unless the Act of Parliament stated very clearly from what source the money is to come, and also in what way the payment is to be enforced, it would be better to do away with the fee altogether.

1262. You heard what Mr. Boyd said as to the willingness and the way in which the churchwardens were remunerated in his district?
Yes; and I believe that would be the same in my own archdeaconry, were it not that on the day of visitation the churchwardens meet together before service, at some public room, and then it is in the power of one or two persons, who are disposed to make a difficulty, to put it into the heads of the rest to refuse to pay. There is no unwillingness to pay.

1263. Viscount *Halifax.*] Is there not a considerable objection on the part of one half if they find the other half do not pay?
Quite so; particularly when they are told there are no means of enforcing it.

1264. *Chairman.*]

1264. *Chairman.*] Is there any fee that you think presses particularly hardly on the parochial clergy?
No; I am really not prepared to say that there is.

1265. You of course are a parochial clergyman yourself, and for years were so before you were archdeacon?
Yes.

1266. You, therefore, know the feelings of the clergy?
Yes. Of course clergymen who possessed no private means, and were presented to very small benefices, would feel any fee.

1267. Are there any other fees that they pay except those for taking possession of their offices?
No, I am not aware of any, except the procurations, the synodals, and the tenths to Queen Anne's Bounty, where the living is liable.

1268. That last is a payment for the benefit of the poor clergy?
That is a payment for their benefit.

1269. So that you have no distinct proposal as to remitting fees at present chargeable on the clergy?
No; that is not a point that I could say I have specially attended to.

1270. Except the general impression you have that it is better that they should pay as little as possible?
Quite so; that would be all.

1271. *Lord Steward.*] Do you not think the fact of being under an obligation to pay these fees, though they are small in amount, is a constant source of annoyance?
I hardly think that it presses upon them; I have not heard any feeling of annoyance expressed.

1272. You have referred to the payments made to Queen Anne's Bounty; how are those payments generally made?
I think that the secretary to the governors writes annually, at a certain period of the year, to each incumbent, requesting him to remit the amount.

1273. I wanted to know how the payment was actually made?
I am not in a position to answer that question.

1274. Of course, in the case of a clergyman having a banker's account, there would be no difficulty; but I suppose many of the parochial clergy have no account with a banker?
No.

1275. And the payment of these small sums is a constant and continually recurring source of annoyance, though the amount in itself may be small?
I do not know.

1276. *Chairman.*] And that would apply to procurations and synodals, of course; that recurs every year?
Every year; they are usually paid at the visitation.

1277. These are the only fees called ecclesiastical fees which are paid continually, year by year, I suppose?
The only fees that I know of.

1278. The others are paid on taking possession of the benefice or curacy?
Yes.

1279. *Lord Steward.*] Would a procuration and a synodal be recoverable by a suit of law or by a process in the ecclesiastical courts?
I have always been given to understand that they are recoverable in the courts of law; in the county court, for instance.

1280. *Chairman.*] That has never been tried, has it?
I rather think in the diocese of Norwich there have been cases.

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1281. Viscount *Halifax.*] Do you know what is the largest amount of synodal paid within your knowledge?
I think it is about 2 *s.* 6 *d.*

1282. *Chairman.*] Do you see any objection to the amalgamation of officers proposed in the Bill?
No; with this limitation, that in the case of a large diocese like Lincoln, where two archdeacons might be wishing to hold their visitations at the same time, unless the registrar could legally appoint a deputy *pro tem.*, one of the archdeacons would be placed in some difficulty.

1283. How many archdeacons have you?
Three.

1284. Messrs. Moss and Swan are the registrars, are they not?
They are the registrars to the bishop.

1285. And to the Archdeacon of Lincoln?
One of them, Mr. Swan, is registrar to myself and to the Archdeacon of Stowe also.

1286. So that they are already registrars to the bishop and to two of the archdeacons?
Yes.

1287. And the difficulty only arises in the case of the third archdeacon?
If the Archdeacon of Stowe and myself were wishing to hold visitations at the same time, if there were only one person who could legally act as registrar, it would be inconvenient.

1288. There are two partners in the firm in question?
Mr. Moss is the bishop's private secretary, and jointly registrar with Mr. Swan to the bishop.

1289. Messrs. Moss and Swan are in fact secretary to the bishop, registrar to the bishop, and registrar to the Archdeaconry of Lincoln, and registrar to the Archdeaconry of Stowe?
Not precisely so. Mr. Swan alone is registrar to myself and to the Archdeacon of Stowe, but he has always supposed that he could appoint a legal deputy *pro tem.* under present circumstances.

1290. And your point is that the deputies are abolished by the Bill?
I fancy so.

1291. *Lord Steward.*] Do you see in the Bill any power enabling you to obtain from the diocesan registrar, when he becomes the archdeacon's registrar, the same advice as you now get from the archdeacon's registrar who is under your own control?
I have thought of that matter; I confess it has not presented a difficulty to my mind; I thought I should be able to obtain the same advice if I needed it.

1292. *Chairman.*] At present you cannot dismiss the registrar, can you?
I have always supposed that he could not be dismissed except for some serious neglect of duty.

1293. So that your present registrar has been handed on to you from your predecessor, and holds a freehold office?
Yes.

1294. And yet you can get advice from him?
I have never found any difficulty at all.

1295. *Lord Steward.*] It is stated in Schedule C. of this Bill, "The registrars of the dioceses shall discharge the duties of the following offices in their respective dioceses: registrars of Commissary Courts (if any), bishop's secretary;" but there is no obligation upon them to discharge the duties of registrar of the archdeaconry?
I thought that the registrar of the bishop had become *ipso facto* registrar to the archdeacon whenever there was a vacancy.

1296. So he does; but I ask if you know whether, in this Bill, there are any means of providing how he is to be compelled to discharge his duties?
No.

1297. *Chairman.*]

1297. *Chairman.*] Have you read the clause "From and after the passing of this Act, the bishop of every diocese shall, on any vacancy in the office of registrar of his diocese, appoint by a writing under his hand and episcopal seal, a barrister at law or a solicitor to be, during the pleasure of the said bishop, registrar of such diocese, and such registrar on any vacancy in the office of registrar of any archdeacon and archdeaconry within such diocese shall become such registrar, and the said offices shall thenceforward be united to the office of registrar of such diocese;" that is more explicit than the schedule?
Yes.

1298. Have you got an apparitor?
Yes.

1299. What are his duties?
Simply to send out the citations to the clergy and the churchwardens previous to the visitation, and to be present in court when the visitation is held.

1300. To keep order?
To keep order.

1301. To act as the constable of the court, in fact?
Yes.

1302. Does he earn his salary, such as it is, in your opinion?
Now that the personal service is not considered necessary, I certainly hardly think that he does.

1303. How much does he receive, do you suppose?
I think it is 2 *s.* 6 *d.* from each parish.

1304. *Lord Steward.*] When he gets it?
When he can.

1305. *Chairman.*] You do not know what the emoluments of an apparitor to an archdeacon are?
I have several different apparitors for different visitation calls, so that it is a very small amount indeed that anyone receives.

1306. Is there anything else you desire to state?
I do not think of anything else; I might be allowed perhaps to say that if procurations and synodals are retained, which I venture to hope they may be, it has occurred to me that they might be collected by Queen Anne's Bounty, when the tenths are collected. It is merely a suggestion of mine that they might be collected in that way. The tenths are paid to Queen Anne's Bounty every year, and I thought that they might receive the procurations and synodals; it would save a great deal of trouble.

1307. Lord *Winmarleigh.*] You mean, that though paid to a different officer, that they should be paid in at the same time with the other fees?
Yes.

1308. *Lord Steward.*] But does not this present a difficulty, that Queen Anne's Bounty are in receipt of tenths only from those livings not discharged in the King's Book, whereas the procurations and synodals are payable by all livings?
Yes.

1309. That would be a difficulty in the way of the system which you propose?
Yes; it would impose more difficulty and more labour upon the officers.

1310. *Chairman.*] It was represented to me that the Archdeaconry of Lincoln paid a very large sum to Queen Anne's Bounty in the shape of tenths and first fruits?
Very large; and I should like to draw attention to that one point; because supposing, in the case of a vacancy, the canonry to be given to the Archdeacon of Stowe, the Lincoln Archdeaconry would be still chargeable with a sum of 180 *l.* as first fruits to Queen Anne's Bounty, and yearly tenths and other charges besides to the Commissioners, out of what would then only be the 200 *l.* a year from the Ecclesiastical Commissioners.

The Venerable Archdeacon *Kaye*.

2nd March 1876.

1311. You think it would be a hardship, that 180 *l.* should be paid on entering on an office only of the value of 200 *l.* a year?

Yes.

1312. That arises from the value of old estates having been confiscated, does it not?

No; that 180 *l.* is the first fruits of the procuration and synodals; and if they are abolished there will still be the same charge payable to Queen Anne's Bounty, but there will not be the source from which to get it.

The Witness is directed to withdraw.

Ordered, That the Committee be adjourned to Monday next, Twelve o'clock.

# *Die Lunæ, 27° Martii*, 1876.

PRESENT:

| | |
|---|---|
| Lord Archbishop of CANTERBURY. | Viscount Cardwell. |
| LORD STEWARD. | Lord Bishop of ELY. |
| Earl of SHAFTESBURY. | Lord STRAFFORD. |
| Earl STANHOPE. | Lord HATHERLEY. |
| Earl NELSON. | Lord WINMARLEIGH. |
| Viscount HALIFAX. | |

THE LORD ARCHBISHOP OF CANTERBURY, IN THE CHAIR.

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The Very Reverend EDWARD BICKERSTETH, D.D., is called in; and Examined, as follows:

The Very Rev. *E. Bickersteth*, D.D.

27th March 1876.

1313. *Chairman.*] You are now Dean of Lichfield, and have been Archdeacon of Berkshire?

I was Archdeacon of Buckingham, in the Diocese of Oxford, for 22 years, that is, from 1853 to 1875.

1314. You are also Prolocutor of the Lower House of Convocation of the Province of Canterbury?

Yes; I have been elected four times Prolocutor of the Convocation of Canterbury, and have held the office for 12 years.

1315. Both as Archdeacon and as Prolocutor of the Lower House of Convocation of the Province of Canterbury, you have had occasion to consider the question of ecclesiastical fees?

To a certain extent I have.

1316. You have read this Bill now before the Committee?

I have read this Bill carefully.

1317. It has been suggested to us that archidiaconal visitations may be affected by the Bill as it at present stands; have you examined the clauses which bear upon that subject?

I think that as the Bill is drafted it would seriously affect the archdeacons' visitations; in fact it would slowly, perhaps, but necessarily, extinguish them.

1318. On what do you ground that opinion?

The proposal of the Bill is that churchwardens shall be admitted, not before the archdeacon at his visitation, but by the chairman at the vestries.

1319. I think you are referring to the draft Bill, and not to the actual Bill now before the Committee; the actual Bill now before the Committee provides that they shall be admitted at the visitation?

I beg pardon. I was referring to the draft Bill.

1320. But it imposes, as a necessity, a stamp fee of 5 *s.* to be paid at the visitation?

Yes.

1321. Do you think that would affect the visitations?

The Very Rev. *E. Bickersteth*, D.D.

27th March 1876.

I think that even that, as it stands, might materially affect the efficiency of the visitations of the archdeacons; it appears to me that the churchwardens would be less willing to attend than they are now.

1322. At present the legal fee is as much as 16*s.*, is it not?
The visitation fees altogether are now fixed by Order in Council at 18 *s.*

1323. And that is a legal fee?
Yes, that is a legal fee.

1324. Payable under a statute?
Yes.

1325. But there is great difficulty in collecting it?
I cannot say that I found that difficulty in my late archdeaconry.

1326. Did you find the churchwardens generally paid the 18 *s.*?
They generally paid their 18 *s.* without difficulty; perhaps I ought to say that the fees in my late archdeaconry were higher before this arrangement, and therefore the churchwardens regarded it as an advantage that under the new arrangement they had to pay less than they had paid before.

1327. Do you know what they paid before?
I had already myself reduced the fees. When I became archdeacon, I found them, I think, about 30 *s.* a year.

1328. From each churchwarden?
Not from each churchwarden, but from each parish; but with the advice and counsel of my registrar I reduced the fees to one uniform rate of 20 *s.* for each parish.

1329. Then they were further reduced by Order in Council to 18 *s.*?
Yes.

1330. And the churchwardens were not unwilling to pay them?
Not generally.

1331. Do you suppose that they paid them out of their own pockets?
I think that in most cases they were recouped by the parishes.

1332. From what source would the money be derived?
Sometimes from small endowments for the sustentation of the churches, and sometimes from the voluntary offertories which had superseded the church rates.

1333. Does it appear to you to be a fair and proper application of a voluntary offertory that it should pay ecclesiastical fees?
I should not say that it is an improper application any more than the payment from the church rate was.

1334. The offertory is made I suppose for the sustentation of the fabric, is it not?
Since the Act for the abolition of Compulsory Church Rates, it is frequently made for the expenses, both of the fabric and of the services.

1335. Do you consider then the superintendence by certain officers as indispensable for the maintenance of the fabrics and services?
I presume your Grace refers to the churchwardens. I think that the churches would soon fall into a very unsatisfactory condition if there were not those officers, and if those officers were not watched over by their superior officers the archdeacons, acting under the bishop.

1336. So that you then consider that the appointment and admission to office of the churchwardens, and the superintendence of the churchwardens by the archdeacons under the general control of the bishop are indispensable, or at all events, are of great importance for the due performance of Divine Service, and for the maintenance of the fabric?
That is undoubtedly my view, after long experience.

1337. Therefore you are of opinion that money collected for the maintenance of the fabric, and for the due performance of Divine Service, may properly be applied in securing the attendance of such officers to their duties?
That is quite my view.

1338. You

1338. You do not think that the offertory is intended merely for the poor?
That is a difficult question to answer. I incline to think that so long as there is a mutual good understanding between the incumbent and the churchwardens, there can be no sufficient reason why the offertory should be altogether limited to the relief of the poor.

1339. Are you acquainted with any case in which a churchwarden in your late archdeaconry has had a difficulty in recovering the fees from public sources?
There have been a few isolated instances of parishes under some exceptional circumstances where there has been a difficulty, but they were very few in my archdeaconry.

1340. Then you are not of opinion that the payment of a fee of 5 *s.* insisted on as a necessary qualification for office, would interfere with the appointment of churchwardens?
On the contrary, I think it would be a great gain. It seems to me rather a small fee. I do not know whether it is the time for me to make a suggestion to your Grace upon that point.

1341. Yes, if you please?
It has occurred to me that it might be an improvement upon the proposal if the fee stamp was 7 *s.* 6 *d.* instead of 5 *s.*, and that half-a-crown of that 7 *s.* 6 *d.* was returned to the churchwarden when he comes before the archdeacon to make his declaration, to defray his expenses incurred in going to the visitation.

1342. You would have a fee of 7 *s.* 6 *d.* imposed at the election?
Yes.

1343. And 2 *s.* 6 *d.* of that returned to the churchwarden when he appears before the archdeacon for his expenses in coming to the visitation?
Yes.

1344. Not as a bribe to the churchwarden to attend the visitation?
I should not at all put it in that way; I should treat it simply as a payment of his necessary expenses; I think it would work in the way we desire, namely, to encourage their attendance at the visitations. Knowing the position in life of the great mass of the churchwardens in rural districts, I think it would make a difference to them.

1345. Formerly I think it was the custom to pay the travelling expenses of the churchwardens out of the church rate?
Yes.

1346. Therefore you would substitute the repayment of a part of this fee in lieu of the former payment out of the church rate?
Quite so. May I make one other general observation with regard to the utility of the visitations. I am convinced that the present circumstances of the times make it more than ever important that the visitations should be well sustained. We live in days of Church conferences and Church congresses, and I think it most important that persons holding official positions should have an opportunity from time to time of expressing their views upon Church matters, as it were, *ex cathedrâ*. The words of men of character, speaking with authority, have a sobering and balancing effect upon the general tone and thoughts of both clergy and laity.

1347. Were the churchwardens always present during the delivery of your charges?
Yes, always.

1348. Did the churchwardens and the clergy assemble together?
They assembled together in the church and listened to the charge together, and received the Holy Communion together afterwards; and then they dined together in the afternoon. I invited the churchwardens to come and take part with us in our social arrangements.

1349. And your opinion is that great good arose from these meetings of clergy and churchwardens at the archdeacon's visitation?
I have not the slightest doubt about it, and I think it would be a very serious injury to the best interests of the Church if the visitations were abolished.

The Very Rev. *E. Bickersteth*, D.D.

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1350. Viscount *Halifax*.] I understood you to say that you had been Archdeacon of Buckingham?
Yes.

1351. And that you reduced the fees to 20 *s*., and since then they have been reduced to 18 *s*.?
Yes.

1352. Are you aware that the late Archdeacon of Buckingham has done away with the fees altogether?
I was not aware of that.

1353. *Chairman*.] You are the late Archdeacon of Buckingham?
Yes; does his Lordship refer to the present Archdeacon of Buckingham?

1354. Viscount *Halifax*.] Dr. Deane stated to us in evidence, "I am aware that in Buckinghamshire, for instance, the late Archdeacon of Buckingham did away with fees altogether"?
I have just stated the contrary; I reduced the fees, but I certainly did not do away with them; and the new archdeacon has not yet held a visitation at all.

1355. Has there been any archdeacon intermediate between you and the present archdeacon?
No. I think I can explain it. At the time when I reduced the fees, the legal question was raised whether the reduction of the old fees, which were payable by custom, did not imperil the whole thing. That was before the Act was passed enabling your Grace and others to fix the fees at 18 *s*.; but there was no difficulty about the payment of the 20 *s*. Since the Act has been passed fixing them at 18 *s*., they rest on Statute law, and the difficulty is swept away entirely.

1356. *Chairman*.] Do you know with regard to the present archdeacon whether any change has been made by him?
The present archdeacon has not held a visitation yet, but I cannot conceive that he will make any change in the arrangements settled by Order in Council.

1357. I think Dr. Deane must refer to the reduction and the consequent doubt as to invalidating the fee during your time?
Quite so; I have no doubt of that.

1358. Bishop of *Ely*.] With regard to the return out of the 7 *s*. 6 *d*. stamp fee, do you propose that 2 *s*. 6 *d*. should be returned out of that to each churchwarden for his expenses?
Yes.

1359. So as to leave only 2 *s*. 6 *d*. receivable by the registrar?
No, I think that each churchwarden should have to get a 7 *s*. 6 *d*. stamp. There are many parishes in which there is only one churchwarden.

1360. Therefore you would recommend that each churchwarden should have a separate stamp, and for each stamp should pay 7 *s*. 6 *d*., and that 2 *s*. 6 *d*. should be returnable to each churchwarden who attended the visitation?
Yes.

1361. Leaving 5 *s*. receivable by the registrar from each churchwarden?
Yes.

1362. *Lord Steward*.] That would only be a reduction of the fee taken under the present table from 18 *s*. to 15 *s*. in parishes where there were two churchwardens?
Quite so. But then 5 *s*. of this 15 *s*. would go in personal expenses.

1363. Then as you read Clause 42 in this Bill, you consider that each churchwarden should be required to produce a stamped certificate?
That is what I should recommend.

1364. I asked about the present Bill, and how you read Clause 42 of it?
That clause seemed to me rather obscure; I did not quite understand what was meant by it.

1365. Bishop of *Ely*.] If you would look at the two last lines of the clause you would

would see that it is provided that the certificates of both the chuchwardens may be upon one stamped form?

Yes, quite so.

1366. Earl *Nelson*.] That proviso does not quite meet the case, because it is confined to those churchwardens who are appointed by the vestry, but one of the churchwardens in a parish is not appointed by the vestry at all, he is appointed by the clergyman?

I thought the meaning of the clause was not quite clear.

1367. *Lord Steward*.] Your plan would produce this result; that if the fee was raised to 7 *s*. 6 *d*. in the case of every parish where there was more than one churchwarden, that which was left to the registrar would be only 5 *s*.?

Yes; my idea was that if there were more than two churchwardens, each churchwarden should have the stamp of 7 *s*. 6 *d*.; generally speaking in parishes where there are more than two churchwardens, there is more wealth in the parish; it is a more important parish.

1368. Bishop of *Ely*.] Then in fact you do not think that the churchwarden's payment is an oppressive charge which requires to be reduced or removed?

I do not think so at all; I do not think there is anything at all oppressive in the demands.

1369. Nor does it interfere with persons accepting the office in your experience?

Not in my late archdeaconry.

1370. *Chairman*.] I understand that there are several parishes in which there are more than two churchwardens?

Yes; there are several.

1371. And you do not think that even in those cases the 7 *s*. 6 *d*. for each would be too much?

I do not think so.

1372. I understand that all churchwardens are appointed in vestry, even though they are not appointed by the vestry; is that correct?

Yes; that is the legal mode of electing churchwardens. Almost without exception it is done in the Easter week.

1373. The clergyman nominating a churchwarden, nominates him in vestry?

Yes, he nominates him in vestry.

1374. And you consider that there is no impropriety, but the reverse, in the churchwarden being reimbursed for the payment of these fees out of any funds such as those mentioned in Clause 42 for the maintenance of the fabric and the services of the Church?

I cannot perceive any impropriety in an arrangement which tends to promote the due order of the services and the due sustentation of the fabrics of our churches.

1375. And as far as you are aware, in your own archdeaconry, the present fees are paid out of such a source?

Yes.

1376. Viscount *Halifax*.] Do you include in such a source sums collected at the offertory at the Communion?

I think that in some parishes the offertory collected at the Communion is applied to the purpose.

1377. I asked you if you thought it desirable or right that it should be so?

I suppose that if the Church was in her full life and vigour the offertory would be collected from the whole congregation, and then this offertory and an ordinary contribution would be one and the same. It might be treated very much like a church rate.

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1378. Do you think that money so produced could properly be applied to the payment of churchwardens' fees?
I think so, quite. I can see no impropriety in it.

1379. *Chairman.*] What is the usual substitute which has practically been adopted of late years in the Archdeaconry of Buckingham for church rates?
In a considerable number of parishes the old church rate system still survives.

1380. In these cases you would pay the fees out of the church rates?
Yes.

1381. What is done in other cases?
In other parishes they substitute either the offertory or a system of guaranteed subscriptions, or both. Persons who are interested in the church agree together from year to year to subscribe so much towards the expenses of the fabric and its services.

1382. In both those cases the persons voluntarily subscribing know that their money will be applied for the sustentation of the fabric and for the conducting of the services?
Yes; and this shows the importance of producing a balance sheet regularly from year to year, and I frequently impressed that upon the churchwardens.

1383. And the payment of fees is entered as a matter of fact in such balance sheet?
Always.

1384. You have not heard of any objection being made to that?
There are, of course, persons who will object to everything, but I rarely heard of any serious objection.

1385. Earl *Nelson.*] Under the 42nd Clause of the Bill, sums set apart for the repair of the church can be used for the payment of churchwardens' fees. In the case of a new district church, where the endowment fund for church repairs is only 100 *l.*, do you not think that an annual payment of 5 *s.* or 10 *s.* would greatly interfere with the object of the fund?
Do I rightly understand your Lordship to speak of a capital sum of 100 *l.*?

1386. Where the interest of the 100 *l.* is only 3 *l.* 10 *s.*, would you not think that a payment of 5 *s.* a year to an extraneous object would very much interfere with carrying out the object of the fund?
The question which your Lordship has put to me is one which would be answered best by the provisions of the deed setting apart the 100 *l.* If it is a repair fund, then the money applied in payment of these fees would be strictly appropriated to the object for which it was destined.

1387. It would be affected by the 42nd Clause in this Bill, would it not?
I cannot imagine that the interest of 100 *l.* could sustain the services of a church.

1388. If you look at the 42nd Clause, you will see that it says "such churchwarden shall be entitled to be repaid the cost of such stamp, from any funds applicable to the maintenance and repair of the parish church of the parish"?
Yes, I should think that, in the case your Lordship has put to me, an undesirable provision. If the sustentation fund were only 100 *l.* I should think it would be very desirable that the interest should go to the current expenses of the church.

1389. *Chairman.*] Perhaps you think that the interest of 100 *l.* must be supplemented from some other source, if it is to be of any value?
Certainly.

1390. And, therefore, that the charge of the 5 *s.* stamp would not come from the interest of this 100 *l.*, but from a supplemental collection?
Quite so.

1391. Perhaps your experience would lead you to say that 3 *l.* a year is totally inadequate to maintain any building whatsoever?
Totally.

1392. Lord *Winmarleigh.*] You recommend that the fees paid by the two churchwardens, taken jointly, should be 14*s.*?
Fifteen shillings.

1393. Supposing that was taken out of the interest of a repair fund of 100 *l.*, it would be a still more serious diminution than that which is proposed in the Bill?
Yes.

1394. Earl of *Shaftesbury.*] You would think that to take a sum of money for the visitation fee of the churchwardens out of the offertory money collected at the Communion, would be a legitimate use of the money so collected?
Certainly.

1395. Do you think it would be consistent with the Rubric?
That question is a difficult one to answer, but I should suppose it to be covered by the direction in the Rubric that the offertory is to be applied to such "pious uses" as the minister and churchwardens may see fit.

1396. Lord *Winmarleigh.*] The words of the Rubric are to "pious and charitable uses"?
Yes; and I should have thought that this was a "pious use." It is for sustaining the services of the Church and the fabric of the church.

1397. Viscount *Halifax.*] You think that the payment of the churchwardens' fee would be a pious use?
Yes.

1398. *Chairman.*] You are of opinion, at all events, that the payment of certain persons to preserve the fabric is of the same nature as the payment of masons and carpenters for working on the fabric?
I should say so; it is absolutely necessary.

1399. And that if it is a pious use to pay a mason, it is a pious use to pay the man who looks after him?
I should say so.

1400. Earl of *Shaftesbury.*] Would you give him a prior claim under the Rubric, which specifies pious and charitable uses over the first claims that the poor have to the money so collected?
It is difficult to classify and put in order according to their importance the different claims. Undoubtedly the claims of the poor are very great indeed. May I mention to your Grace the way in which we managed the matter in a large town parish, of which I was vicar at one time?

1401. *Chairman.*] In Aylesbury?
Yes. We had long ceased to collect church rates there, and we provided for the sustentation of the fabric, and for the services of the Church by means of monthly offertories, and by a guarantee fund; but the arrangement was that all the offertories were divided, one moiety being set apart strictly for the poor, and the other moiety being applied to the expenses of the church. The noble Earl will see that by that arrangement we took care of the interests of the poor.

1402. It has been proposed as a concession that all fees payable by churchwardens should be abolished; do you think that desirable *per se*?
No; I do not think it is desirable. If the visitations, which I hold to be very important, are to be maintained in their efficiency, you cannot have responsible officers, such as registrars, without paying for their services; and a great deal depends upon the men who are chosen for that office.

1403. It being necessary, in your opinion, to pay registrars and other officers, and it being also desirable to reduce existing fees, do you think that the first claim, supposing the reduction to take place, would be with the churchwardens or with the poorer clergy?
I think the poorer clergy would have the first claim.

1404. Are there any fees paid by the clergy, whether poor or rich, at the visitations of archdeacons?
Yes; the clergy pay procurations and synodals at the visitations. Those procurations and synodals stand upon a very different footing, I believe, from what

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are called the visitation fees. The procurations and synodals are a very ancient charge upon the different livings.

1405. Are they included in the list of fees sanctioned by statute?
No, they are not touched.

1406. They rest upon ancient prescriptive usage?
Yes, upon ancient custom.

1407. Then if you were called upon to suggest a reduction of fees, you would rather suggest that procurations and synodals should be abolished, than that the fee payable by the churchwardens should be abolished?
I do not think that I should recommend the abolition of procurations and synodals altogether, but I should like to see a graduated scale, and to see the smaller livings exempted from those payments; that is to say, livings below a certain value. Some are exempted now, but I should like to see the exemption carried further.

1408. Do you know whether procurations and synodals are payable by lay rectors?
Yes; I think in some instances they are.

1409. Is it your impression that the fees at present levied on clergy and laity are excessive?
I think they might be reduced with advantage; I think the excess of the fees arises chiefly from the multiplication of offices. There is no necessity to have more offices than are absolutely required for the work to be done.

1410. You have examined this Bill in its provisions which have to do with the amalgamation of offices?
Yes.

1411. Do you approve of what is proposed there?
Generally I do. But there are some points which I little hesitate about. I should like to see the offices of official principal and vicar general separated; they are very different offices. The one is a judicial office strictly, and the other is a spiritual office.

1412. Those are the two offices which are at present held by the chancellor of the diocese?
Yes; the word "chancellor" being a word of very wide meaning, which covers both offices.

1413. You are alluding now to the official principal of the bishop, not to the official principal of the archdeacon?
No; I speak of the official principal of the bishop. With regard to the Archdeaconry of Buckingham, there were certain peculiarities; it was a remote limb of a very large diocese, the Diocese of Lincoln, and the Archdeacons of Buckingham, from time immemorial, have been invested with very considerable powers. They were always the commissaries of the bishop; they granted faculties, they issued licenses, and, in fact, they did everything short of performing the spiritual functions of the bishop. Of course the Archdeacon of Buckingham had his official: but it so happened, when I became archdeacon, that the office of official principal of the archdeaconry was vacant, and I never filled it up; it seemed to me an unnecessary office.

1414. You propose, you say, that the office of official principal shall be separated from that of vicar general in the case of the episcopal official principal?
Yes.

1415. The duties of the official principal are judicial duties, if I am rightly informed?
Yes.

1416. Do you consider that there are judicial functions performed by the chancellors in their capacity as official principals at present is a matter of fact?
I do not think they have very much to do; according to what I can learn, I think the office of the chancellor as official principal has been falling very much into desuetude of late years.

1417. Am

1417. Am I right in making a distinction between contentious matters and merely formal matters?
Quite so.

1418. Am I right in supposing that the official principal, in his judicial capacity, often performs many formal acts, but very seldom any judicial acts in contentious matters?
So far as I can learn, I think that is the true state of the case.

1419. Then supposing the official principal's office to be separated from that of the vicar general, to which of those two officers would you assign the formal judicial acts which are at present performed by the chancellor?
The judicial acts might be passed over to the official principal, leaving the vicar general as the spiritual adviser of his bishop generally.

1420. I will take a case of this kind: supposing a faculty is applied for, as long as there is no contention the official principal gives his formal assent after the matter has been submitted to the vestry?
Yes.

1421. But supposing a dispute arises in the vestry, both parties will have to be heard before him, as in a contentious suit?
Yes.

1422. Would you transfer the mere formal issuing of faculties to the vicar general?
I think it is not a matter of any great importance, but I should think that that might be done by the vicar general.

1423. You would leave any strictly judicial acts to the official principal?
Yes, in the contentious matters.

1424. *Lord Steward.*] I understood you to say that you desired the vicar general to be the spiritual adviser of the bishop?
Yes.

1425. By that you mean his adviser upon matters of spiritual discipline, I suppose?
I meant his adviser generally in all matters affecting the highest interests of the diocese.

1426. *Chairman.*] Upon legal questions principally, I suppose?
If I may presume to say so, I think the vicar general might be exceedingly useful in preventing litigation.

1427. Bishop of *Ely.*] Then should he be a lawyer, according to your view?
I should leave it open to the bishop to appoint a spiritual person; I should be sorry that he should be restrained from appointing a spiritual person if he saw fit to do so.

1428. Is it not the case that the vicar general, or the chancellor in his capacity of vicar general, now has a great deal to do in the matter of marriage licenses?
They are issued as a matter of form; it does not involve any trouble at all to the chancellor.

1429. Does it not sometimes involve difficult cases, requiring an amount of legal knowledge?
I am not aware that there is any important difficulty connected with the issuing of marriage licenses.

1430. *Chairman.*] We have had the evidence of the Vicar General of the Province of Canterbury, to the effect that he is perpetually called upon by the registrar to decide important legal questions connected with marriage licenses. You would not put an ecclesiastic in the position of vicar general of the province, I suppose?
No; I think that is a different case altogether.

1431. Bishop of *Ely.*] As I understand it, the licenses issued by the vicar general of the province may be greater in number, but the issuing of them is a similar office in kind to that of the vicar general of a diocese. The area over which the vicar general of the province issues licenses is larger, but if the vicar general of the province has important cases to decide and to judge upon in

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reference to the issue of marriage licenses throughout the province, would not the vicar general of a diocese have similar cases to decide upon, although they would not be so numerous, within the diocese?

I have not had experience upon that.

1432. *Chairman.*] You say that you would separate the office of vicar general from that of official principal?

Yes.

1433. But, as I understand you, there would be nothing left for the official principal to do?

I do not think there would be very much for him to do, and when I see that the custom is so general of sending important cases by letters of request up to the Arches Court, it seems to me that there would be no reason why the bishop might not, if he thought fit, appoint as his own official principal the official principal of the Arches Court.

1434. The official principal of the province?

Yes; but I think it should be left optional with him to do so.

1435. Your proposal differs from that which was made by one witness, Mr. Day, in that both of you aiming at the union of the office of official principal in the diocese with that of official principal in the province, he wishes it to be compulsory, and you wish it to be done if the bishop approves?

I think the option should be left to the bishop.

1436. Bishop of *Ely.*] Even in regard to faculties, which are not non-contentious, are there not sometimes very delicate questions to be decided. I allude to such a case as this, which has occurred twice, I think, in the diocese of Ely lately, as to widening a road by contracting a churchyard; I think two cases have occurred since I have been bishop, in which the chancellor has had to deal with a case of that kind; and it is obvious that such cases must from time to time occur?

Yes, but I do not think they would be frequent.

1437. Do you think that any but a lawyer could deal satisfactorily with those cases?

I have very frequently been able to adjust difficulties of that kind without consulting a lawyer at all, by appealing to the common sense and good feeling of the parishioners; I am sure a great deal of litigation might be avoided in that way.

1438. *Chairman.*] You are of opinion, then, that that clause, which requires a lawyer to be appointed to the office of vicar general, is a bad one?

I do not think that I go quite so far as that; but I should like to see it left optional with the bishop to appoint a spiritual person.

1439. Had you, as archdeacon, a registrar?

Yes.

1440. Was that the same person who was registrar of the diocese?

No; my registrar was simply the registrar of the archdeaconry.

1441. Do you see any difficulty in uniting the office of registrar of the archdeacon with registrar of the diocese?

No, I do not see any *primâ facie* difficulty; and for this reason, that when the bishop visits, the archdeacon does not visit; and therefore the same officer might perform the duties for the archdeacon, not being required to perform them for the bishop in that year.

1442. And the same officer might perform the duties of all the archdeacons of the diocese?

I think he might. It would be necessary for the archdeacons to make arrangements amongst themselves as to the times of their visitations; that would be all.

1443. Was your registrar appointed by yourself?

Yes, I appointed him myself. I was most fortunate in my registrar, Mr. Acton Tindal.

1444. And he held his office independent of your power of revoking it?

Yes.

1445. Do

1445. Do you think that important?
I think it very important that he should not be liable to be dismissed. I think that the effect of making his appointment subject to the will and pleasure of the bishop would be very much to diminish the interest which he would naturally feel in the office.

1446. You were connected with the diocese of Oxford?
Yes.

1447. The registrar of Oxford is Mr. Baggot, I believe?
Yes, I believe so.

1448. And the whole of the duties are performed by a deputy?
Yes.

1449. That deputy holds his office at pleasure, I believe?
I think it is so.

1450. Did you ever hear of any evil arising in that diocese from the duties being performed by an officer holding the office at pleasure?
No, I have never heard of any, but I could suppose certain complications which might arise so as to make it uncomfortable. A good and efficient man would never be disturbed, perhaps.

1451. What do you consider to be the particular inconveniences of the registrar holding his office at the pleasure of the bishop?
I think the special inconvenience would be this, that he would not feel the same interest in his office that he would feel if he knew that he held it for life.

1452. You are aware that the person who is called the bishop's secretary, holds his office at pleasure?
Yes; but I should hardly put the office of bishop's secretary on the same footing as that of registrar.

1453. Would you unite the office of secretary with that of registrar, as is proposed in the Bill?
I have a little doubt about uniting those two offices.

1454. You are aware that the secretary keeps what is called the Act Book of the diocese?
Yes.

1455. Have you ever inspected an Act Book?
I have never inspected an Act Book carefully.

1456. The Act Books are documents which might be produced in court, I suppose?
Yes.

1457. They are very important registers?
Very.

1458. In fact, is there any very great difference between that register and the other register; in one of them certain acts of the bishop are recorded, and in the other certain other acts of the bishop are recorded; the one is kept by the secretary, and the other is kept by the registrar; the one is kept by an officer who holds his office at pleasure, and the other is kept by an officer who holds his office under a patent; do you think that there is much difference between them?
I could suppose that there may be matters of a private nature connected with the administration of a diocese which it would not be desirable to include in the acts recorded in the registrar's book.

1459. Would they find their way into what is called the Act Book?
They ought not; that is to say, not into the registrar's book.

1460. Nor into the Act Book either?
No, nor into that either, I suppose.

1461. Bishop of *Ely*.] Might I ask why you think a registrar holding during pleasure would take less interest in his work than a secretary holding during pleasure is found to take in his work?
I think the office of registrar takes a much wider range than that of

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secretary, and is a much more responsible office; and it appears to me that a good man would not be so easily found for the office of registrar if he knew that he could only hold his office during the pleasure of the bishop, as if it was to be held for life.

1462. *Chairman.*] Might I call your attention to this case: the former registrar of London resided abroad, holding his office by Letters Patent; the whole duties of his office were performed by a deputy holding his office at pleasure; which of them, do you think, was most energetic or took most interest in the discharge of the duties of the office?

I can conceive that the deputy registrar might hope to succeed to be registrar ultimately; I believe he did so succeed in the case to which your Grace refers.

1463. Viscount *Halifax.*] Are you acquainted with Mr. Davenport, the deputy registrar of the diocese of Oxford?

Yes, I know him well. He is a very worthy man indeed.

1464. Are you aware also that he holds his office during pleasure?

Yes.

1465. Are you aware that he takes such interest in his office that he has invested 1,200 *l.* in fitting up the office for the custody of the records and the discharge of the duties?

Yes, he is an exceptional person altogether.

1466. That is a pretty good proof, is it not, that an officer holding his place during pleasure may take a very great interest in the office nevertheless?

Yes, that is quite true.

1467. *Chairman.*] You would not approve of leaving the appointment of registrars as it is at present, the present rule being that the registrar has a *quasi* freehold in his office under Letters Patent?

No. I do not think that that is a desirable arrangement.

1468. That has led, of course, to the appointment of deputies, and to many of the abuses which have been complained of?

Yes.

1469. Therefore you would propose an alteration?

Yes.

1470. What would be the tenure that you would propose?

I should propose that the registrar should hold his office during the incumbency of the bishop.

1471. And that it should become vacant with the see?

Yes.

1472. Lord *Hatherley.*] Do you think that there would be any objection to his holding his office, whether combined with the other to which you have referred or not, in such a manner as to be liable to be removed by the bishop for cause assigned in the order of removal?

I forget what the particular term to describe the tenure is. I think he would be appointed during good behaviour.

1473. There were officers appointed under the old Bankruptcy Act, some of whom were appointed to hold their office simply during good behaviour, which implied for life, unless some legal process were taken; some were appointed to hold their office simply at pleasure, and others held an intermediate appointment, being removable by the Lord Chancellor for cause to be assigned for such removal in the order. Would there be any objection to a registrar holding on those terms?

I think there would be no objection at all to that arrangement.

1474. Lord *Winmarleigh.*] Would not the remark you made just now with regard to the interest taken in the office be equally applicable if the tenure were during the incumbency of the bishop, as if it were during pleasure?

I hardly think so, because the succeeding bishop would probably re-appoint the registrar if there was no objection to him.

1475. *Lord Steward.*] Is there not this further difficulty with regard to the union of the office of diocesan registrar with the office of archdeacon's registrar, and the proposal in the Bill that the registrars should hold office during the bishop's

bishop's pleasure, that the registrar having offices and duties to discharge in relation to the archdeacon, would not be in so satisfactory a position if he was removable at the bishop's pleasure; is it not inconvenient that an officer performing duties for various persons should be removable at the pleasure of the one of them, the others having no voice in his removal?

I think that is a very strong argument indeed against his being removable at the pleasure of the bishop.

1476. Is there not this difference between the register and the Act Book, that the register contains a record of all that is done in court, and that the Act Book contains a record of a more private nature, of acts not done in court?

That was my idea of the distinction between the two. But I am informed that in the diocese of London, deeds of presentation and other documents are sent by "the secretary" to the registry annually, and that all the bishop's official acts are entered in the registry. I believe that the London Diocesan Registry is excellently kept.

1477. Therefore all the acts done in court are recorded under the authority of a responsible officer, the registrar, who holds his office permanently?

Yes.

1478. For the Act Book the bishop himself is practically responsible, is he not?

I suppose so.

1479. Is the office of secretary to the bishop known to ecclesiastical law?

I have always regarded the secretary as holding a great deal more private relation to the bishop than the registrar.

1480. The Act Book merely comes out of the custody of the bishop, while the register comes out of the custody of the registrar; is not that so?

I suppose it would be so.

1481. *Chairman.*] Is the bishop's secretary known to statute law?

I am afraid I cannot answer that question; I should have thought that most likely he would be.

1482. Bishop of *Ely.*] Is not the Act Book, although of a more private nature, equally important as a public record, with anything that is held in the custody of the registrar?

It is exceedingly important, I should think.

1483. Does it not, for instance, contain the record of all the ordinations?

Yes. I do not know whether the uses of the different dioceses have been the same in that respect; but now, under an Order in Council of 19th March 1869, the registrar is ordered to enter the names and titles of the candidates in the register books of the diocese; the registrar's fee is, in fact, for this purpose. I should suppose the Act Book would also contain the records of the ordinations; but the point which I wanted to press was this, that there must be in the administration of a diocese a great number of matters of a private nature which would naturally only pass from one bishop to the other.

1484. But the secretary in holding the Act Book does hold a document as essential to be safely preserved as any document which the registrar holds, does he not?

I suppose so.

1485. And yet, although an officer holding his office during pleasure, he is found to be a satisfactory custodian of such documents?

Yes; I do not know anything to the contrary of that.

1486. Therefore, why should not the registrar, if he held upon the same tenure, be an equally satisfactory custodian of the documents in his charge?

We view the thing, I think, from different points, and regard it rather differently. I think it would be better that the one should hold during the incumbency of the bishop, and the other during his pleasure. I do not know that it is a matter of any very great importance.

1487. You know a great deal about the action of the bishop's secretary. Should you consider it essential that the secretary should hold during pleasure?

No, I should not think it essential.

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1488. But desirable?
I think it desirable, certainly.

1489. Earl *Nelson.*] I hold in my hand a Report of a Committee on First Fruits and Tenths, concerning diocesan officers and fees, made to the Lower House of the Convocation of Canterbury, under date of 9th and 10th of July 1874, with an Appendix, which is really very full of information upon the subject that we are dealing with. Would you have any objection to placing that document on our Minutes?
I have a little hesitation about doing so, because although this is a Report of a Committee of Convocation, it has never been in any way accepted by Convocation, and I am quite certain that it never will be accepted by Convocation in the form in which it is drafted here.

1490. Then there would be no way in which we could get before us the very valuable information which it contains?
His Grace, the Chairman of this Committee, is President of Convocation; I should bow to him if he wished it to be put in.

1491. *Chairman.*] You were chairman of that committee, were you not?
No; I am *ex officio* a member of all committees, but I could not be chairman of all. Mr. Gibbs was the chairman of that committee.

1492. Do you consider that an important document, as setting forth the opinions of important clergymen, at all events?
I think it an important document, but I am quite certain it would have had no chance of being agreed to by Convocation in its present form.

1493. Earl *Nelson.*] The information which it contains is very important indeed; perhaps we could get that information without the resolutions with which the report finishes, and which it was intended to propose to Convocation?
There is no objection to its being put in so long as it is distinctly stated that it has not been approved by Convocation.

1494. We may take it as a report of a committee which has not been presented?
It has been presented, but not approved.

1495. *Chairman.*] It has been published already, of course?
Yes; I may say it proposes to extinguish archdeacons, and there are 56 archdeacons in the Lower House of Convocation; therefore there would be 56 votes against it if it came up.

1496. Earl *Nelson.*] I see that one of the recommendations of the committee is that there shall be a diocesan fee fund established; I wish to ask you if you think that the best way of dealing with these funds would be to deal with them as diocesan funds, rather than, as this Bill does, by making it one general fund, in the charge of the Ecclesiastical Commissioners?
If his Grace will permit me, I should like to say a word upon that point. I am strongly of opinion that it would be desirable, in the first instance, to provide for the necessary income of the Official Principal of the Province by a different mode, by taxing the chancellors in the different dioceses. It appears to me that the proposal to establish this great fee fund is rather too large a proposal to deal with at the present time. We have not the full information necessary to enable us to judge of it; and it has occurred to me that if a provision could be made for providing for the salary of the official principal of the province by taxing the chancellors, of course respecting existing interests, the other proposal for a common fee fund would be best left until we have more information before us. I feel strongly upon this point, because there are different uses in the different dioceses, and many matters which would have to be carefully considered before a proposal of this kind could really find the favour which one would wish it to find. The other proposal, that is to say, the proposal of providing for the income of the judge by taxing the incomes of chancellors, is a simple arrangement, and might be carried, as they say, *sine strepitu*, without any difficulty.

1497. *Chairman.*] Do you think that the chancellors would appreciate its simplicity?
I do not think they would object to it if their own existing life interests were duly protected. It should be provided that it should only apply to chancellors to be appointed after the passing of the Act.

1498. Viscount

1498. Viscount *Halifax.*] Have the chancellors any fixed salary which could be taxed?

The chancellors' incomes are derived, I believe, from the marriage license fees.

1499. Lord *Winmarleigh.*] Is that the only source?

I think the marriage licence fees are the only or almost the only source.

1500. *Chairman.*] They have a payment upon faculties also?

Yes, but the marriage license fees are the principal source. In the diocese with which I am at present connected, the chancellor's income is entirely derived from those fees.

1501. Will you state the reasons why you think the chancellors should bear the whole of this burden?

Because I believe the Judge of the Arches Court has long relieved, and will continue to relieve them of a great part of the duties they now perform.

1502. Do you think that any change has taken place in that respect?

I do not know that there has been any change at present, but probably there will as the Public Worship Regulation Act comes more fully into operation.

1503. Probably you are of opinion that their judicial functions as chancellors are extremely light at present?

I think they are.

1504. Usually matters are sent on to the higher court by the bishop?

Yes. To save expense to himself and the clergy; and so that there shall be but one appeal.

1505. And therefore you think the chancellors might fairly be called upon to pay a part of the expenses of the higher court?

Yes; that is quite my view.

1506. Earl of *Shaftesbury.*] What sum do you think you could raise from the chancellors' incomes?

I believe the incomes of the chancellors amount, in round numbers, to about 5,000 *l.* a year.

1507. Earl *Nelson.*] Are you aware that it is proposed by the Bill that the judge should have a salary of 3,000 *l.* a year?

That is not in the Bill, I think; and I may mention that, as Master of the Faculties, he has 750 *l.* to begin with; therefore, it would not be a very heavy tax upon the chancellors' incomes to make up the amount to what would be sufficient.

1508. Lord *Winmarleigh.*] What is the present income of the chancellors?

It varies very much indeed. I know that in the diocese of Lichfield it is 350 *l.* or thereabouts, and that is almost entirely made up of marriage license fees. I can mention the incomes in a few of the dioceses, just to give you some idea of what they are; of course, Canterbury is an exceptional case.

1509. *Chairman.*] May I call your attention to page 5 of the statement which has been circulated in the Committee; you will find there that the average income of the chancellors of the other dioceses, exclusive of London, is 247 *l.* a year: does that agree with your calculation?

I will mention a few cases, that the Committee may judge for themselves. In the diocese of Bath and Wells it is 130 *l.*, in Carlisle 140 *l.*, in Chester 640 *l.*—that is an exceptional case,—in Durham 280 *l.*, in Ely 50 *l.*, in Exeter 330 *l.*, in Gloucester and Bristol 200 *l.*, in Lichfield 340 *l.*—I see that is the figure put down here,—in Lincoln 190 *l.*, in London 340 *l.*, in Manchester 500 *l.*, and so on; the total amount being given as a rough estimate at 5,000 *l.* a year for all of them.

1510. Earl of *Shaftesbury.*] Did you state from what sources those incomes are derived?

They are chiefly derived from the marriage license fees.

1511. Are there any other sources from which the chancellors receive any income?

There are a few other sources, but the principal source is the marriage license fees.

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1512. Do not the Parliamentary Returns of 1871 show that the receipts of the chancellors amounted to 8,600 *l.* a year?

I do not remember those figures.

1513. Lord *Hatherley.*] Have not the establishment of the Court of Probate and Divorce on the one hand, and the passing of the Clergy Discipline Act on the other, very much diminished the duties of the diocesan chancellors?

There is no doubt about that, and everything tends to the reduction of the duties of the chancellors. I believe that the tendency to promote open seats in our churches will in time very much reduce the number of the faculty cases.

1514. The chancellors' business has been gradually withdrawn, and it is now very trifling?

Yes; probably the figures quoted by the Earl of Shaftesbury would be explained in that way. There are different causes which explain the diminution of the chancellors' incomes; the Probate Act has taken away one source of income, and the gradual doing away with pews altogether in our churches and substituting open seats has taken away another source. The income derived from faculties has diminished to a great extent.

1515. And the Church Discipline Act has transferred a good deal of business to the Arches Court?

Yes.

1516. *Lord Steward.*] Pews were a constant source of litigation, were they not?

Yes.

1517. And consequently of fees?

Yes.

1518. Lord *Winmarleigh.*] Has the open pew system been carried on throughout the country to a great extent?

Very great indeed.

1519. Earl *Nelson.*] I think it would be right that you should state what sum you intend to be raised from the chancellor's 5,000 *l.* a year for the judge; I thought you meant that 3,000 *l.* was to be taken from them.

It appeared to me that 3,000 *l.* a year was a very large sum to put down for that.

1520. You would not have thought of taking 3,000 *l.* a year out of an income of 5,000 *l.*?

Certainly not, nothing like that.

1521. What was the sum you thought of?

I have not formed in my own mind an idea of any particular sum. The judge already receives 750 *l.* as Master of the Faculties, and I should have thought that if his income could be made up to 1,500 *l.* or 2,000 *l.*, it would not be a very heavy tax upon the chancellors to make it up to that amount.

1522. Bishop of *Ely.*] Would you levy the tax upon all the chancellors, or would you limit it to those chancellors who receive an income of above a certain amount; in other words, would you allow a minimum chancellor's salary which should not be taxed?

I have not considered the details of the plan. Perhaps a per-centage upon the incomes would be the simplest.

1523. You stated that one chancellor received 150 *l.* a year; you would not tax such an income as that, would you?

Perhaps not. But if it was a per-centage in proportion to income, it would be very small in such a case.

1524. *Chairman.*] In fact, you think that their duties are under the present state of things to a great extent performed by the judge of the provincial court, and that therefore it is only fair that they should pay towards his support.

I think it is a very strong argument for imposing a tax upon their incomes, because their work is done for them and will be done for them by the official principal of your Grace's court.

1525. You

1525. You expressed an opinion as to the sum to be paid to the judge?
Yes.

1526. On what do you base your opinion that 2,000 *l.* a year would be a sufficient payment to the judge; the payment must be compared with other legal not with ecclesiastical receipts, I am afraid?
Yes; it was rather with regard to the probable duties that he would have to discharge, that I mentioned that sum.

1527. It has been alleged that inconveniences arise from the judge of the provincial court being a judge of some other court, and therefore the business of the provincial court being put aside for the business of that other court over which he presides; do you consider that the delays are at all caused, or have hitherto been caused, by that?
That is not a question that I am competent to answer.

1528. When a large income is proposed, you understand that it is proposed in order to secure the entire services of an eminent lawyer?
Yes.

1529. *Lord Steward.*] At the present moment the emoluments of archdeacons are very much derived, are they not, from procurations and synodals?
Their incomes are derived from different sources; procurations and synodals are one source of income.

1530. Archdeacons who had independent estates have surrendered them to the Ecclesiastical Commissioners?
Yes; but many archdeaconries are endowed with canonries, or portions of canonries.

1531. That is the case with the Archdeaconry of Buckingham?
Yes; one of the canonries of Christ Church is charged with the payment of 300 *l.* to the Archdeacon of Buckingham.

1532. In the case of an archdeacon not sustained by a charge on a canonry, or portion of a canonry, the emoluments are almost entirely derived from procurations and synodals?
In some instances I think the Ecclesiastical Commissioners increase the income of the archdeacon.

1533. Where the income derived from procurations and synodals falls short of 200 *l.* per annum, the Ecclesiastical Commissioners make up the difference?
Yes; and there is another source, a portion of the visitation fees goes to the archdeacon.

1534. But in the event of the churchwardens not paying those visitation fees the archdeacon's income is *pro tanto* reduced?
Yes.

1535. And the Ecclesiastical Commissioners are not called upon at present to make up the amount by which the archdeacon's salary is reduced from the 200 *l.* by the non-payment of these churchwardens' fees?
No.

1536. Then let me ask another question: the archdeacon pays first-fruits and tenths to Queen Anne's Bounty?
Yes.

1537. Those payments are calculated upon the present emoluments?
The first-fruits and tenths are an old fixed payment of long standing; they have not altered at all with the changes of the incomes.

1538. Whatever the diminution of the archdeacon's income might be by the non-payment of these fees, or by any failures in procurations and synodals, his first-fruits and tenths would remain at the same figure?
Quite so.

1539. Do you think it is expedient that procurations and synodals should cease to be paid?
I do not think it is expedient that they should altogether cease to be paid;

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but I should like to see them re-arranged, so that the smaller benefices might be exempted from the payment, and other benefices pay upon a graduated scale in proportion to the value of the benefices.

1540. Do you not find very often that the constant recurrence of a small payment is almost equally, if not more, annoying than the recurrence of a larger payment; I mean that a mere nominal diminution of a payment, say from 7 *s.* 6 *d.* to 5 *s.*, leaving the payment of 5 *s.* to be made as before, is not practically any removal of the grievance complained of?

There is something of a fretting nature in a small payment certainly.

1541. And you do not think that a diminution of the churchwarden's fees from 18 *s.* to 5 *s.* would be any practical alleviation of the grievance complained of in those cases where it is complained of?

No, I think not.

1542. Do you approve of the suggestion in the Bill that churchwardens should not be admitted without producing a stamped certificate beforehand?

I do not see any objection to that arrangement at all.

1543. In your own archdeaconry the payments have always been made, I understand you, and therefore you have never had any difficulty?

None of any importance; but I think there is one great advantage in the change proposed in the Bill, that of getting rid of these money payments from the visitations. It gave a secular character to the visitations which it would be very desirable to get rid of.

1544. Have you at all considered the proposal in the Bill to create a fee fund by means of the Ecclesiastical Commissioners?

I think I have stated to his Grace my views already upon that point. I should be very sorry to see that larger scheme carried out at present; because I do not think we have the information to enable us to do it. I should not object to it if we had all the material for framing a scheme; but I am inclined to think that it would be better, even under any circumstances, that there should be a diocesan fee fund which should pay to the common fund, than that the Ecclesiastical Commissioners should be the recipients in the first instance. In fact, I wish to see as little disturbance as possible of the old Diocesan Courts and machinery beyond the abolition of unnecessary offices.

1545. The Bill, as I read it, now before the Committee proposes that the fees shall be paid to the Ecclesiastical Commissioners, and form part of a general fee fund, and that the Ecclesiastical Commissioners should make the payments out of all the moneys in their hands, whether they are in the common fund or not?

Yes.

1546. Do you think it desirable that the salaries of the provincial judge, and the other salaries provided for in the Bill, should be paid out of the common fund of the Ecclesiastical Commissioners in the event of the fee fund falling short?

I do not know that I have any strong objection to its being so done.

1547. Of course, if there were any deficiency in the new fee fund which had to be made up out of the common fund of the Ecclesiastical Commissioners, that would *pro tanto* reduce their power of meeting those claims, the spiritual distribution of which the common fund is impressed with a trust?

I think the arrangement, if I am not in error, was that the Ecclesiastical Commissioners should advance such sums as might be necessary, to be repaid to them as the fees fell in.

1548. In the meantime parishes would be deprived *pro tanto* of the benefit which they now get by these grants under the common fund?

Yes, but it would not be a very serious thing; it would not make very much impression on them.

1549. Is not that a matter of opinion depending upon the maintenance of the marriage license fees at their present scale?

Yes; that is another question altogether. Of course if the marriage license fees are much reduced, it will affect the whole of the proposed fee fund very materially.

1550. But

1550. But notwithstanding that, you see no impropriety in the common fund of the Ecclesiastical Commissioners advancing the necessary payments, and you would take the chance of the probability of Parliament reducing the marriage license fees or not?

I think I should be prepared to take the chance of that.

1551. Lord *Winmarleigh*.] You said that you proposed a modified scale of procuration fees; have you considered what that scale should be, what the proportion should be according to the income?

I have not worked it out at all, but I should be disposed to exempt all livings under a certain value.

1552. Under what value?

I should say all under 200 *l*. a year should be exempted altogether.

1553. What scale would you propose above that?

I have not worked out a scale, but I would exempt altogether all livings under 200 *l*.

1554. Earl of *Shaftesbury*.] Might I ask you what services the apparitors perform to the archdeacons?

They used formerly to serve the citation upon each individual clergyman and churchwarden; but of late years that has been done in a very much more simple way by the post, and therefore the office of apparitor is simply to attend the archdeacon at his visitations, and to preserve order in his court, and to act as messenger in various matters.

1555. Do you think that these services are worth the figure that I see set against them in the Returns of 1871, as that which the apparitors of the archdeacons receive annually, namely, 1,656 *l*. a year?

It sounds a large sum a year.

1556. *Chairman*.] Who issue the letters by which the clergy are summoned now?

The registrars.

1557. The apparitors have nothing to do whatever with that?

Nothing whatever to do with that; they simply attend the court and wait upon the archdeacon.

1558. Who pays the postage?

I suppose the registrar prepays the letters.

1559. You do not know whether it is the registrar or the apparitor?

Undoubtedly it is not the apparitor.

1560. Earl of *Shaftesbury*.] You will observe that this sum of 1,656 *l*. would go very nearly to pay the judge's salary if we get rid of the services of the apparitors?

I think it would be necessary to have one apparitor. In my own archdeaconry I think there were four or five apparitors when I first became archdeacon, but they have been gradually reduced down to two, and I think one would quite suffice; but I do not think you could do quite without them.

1561. Is it not the case that in some instances the apparitors are domestic servants of the bishops and the archdeacons?

I think there are such cases.

1562. *Lord Steward*.] Assuming that there are 56 archdeacons in the province of Canterbury alone, the emoluments of the apparitors, divided per head, would come out at something considerably less than 20 *l*. per annum for all the archdeaconries in England and Wales?

Yes.

1563. And does it appear to you, that taking it at about 16 *l*., which I think it works out to, that is a very exorbitant sum to pay to a messenger?

No; I should think that the sum of 25 *l*. a year would not be too much to pay to one responsible person.

1564. Would not that be largely in excess of the sum now paid?

The Very Rev. E. *Bickersteth*, D.D.

27th March 1876.

I suppose so; but then the sum now paid is often distributed amongst several apparitors.

1565. *Chairman.*] You say that the apparitor keeps order in court; by what process has he power to arrest anybody?

He preserves order in the same way that ushers do in the Courts of Common Law. He opens the court with the usual words, "Oyez, oyez, oyez," and walks before the archdeacon to his seat in the church, and conveys messages for him, and waits upon him as long as the Court is open.

1566. Are there any other points that you would like to draw attention to?

There is one other point which I should be glad to have the opportunity of submitting to the Committee. I am anxious to take this opportunity of saying that I hope very much, in the event of a large common fee fund being ultimately provided, the interests and claims of convocation may be regarded. Your Grace is no doubt aware that the expenses of convocation, which are increasing from year to year, are now defrayed by a voluntary assessment levied upon the members of convocation, and that assessment is a considerable burden to the clergy, who have to come up when they are summoned by your Grace. Many of them have to live at their own charges while in London, and in various ways they feel the burden very much indeed; and I cannot conceive that there could be a more appropriate application of some of the income arising from these suppressed offices than to make a provision for the support of the current expenses of the convocations; I include York with Canterbury. May I read to your Grace two letters which I have received, one from Mr. Francis Cobb, who is the actuary of the Convocation of Canterbury, and the other written to Mr. Cobb by Mr. Philips, who is the synodal secretary of the Convocation of York.

Mr. Cobb writes: "My dear Sir,—I am sorry to say that I have not had time to ascertain what the expenses of the Upper House amount to, but I have received the enclosed from the synodal secretary of the York Convocation, in answer to my inquiries. I find that last year the Convocation of Canterbury Lower House assessments and fees amounted, without any deductions, to 465 *l.* Of this amount, 80 *l.* was for the customary fees due to the registrar, actuary, and ostiarius. The average total amount for four years has been 444 *l.*, but the expenses are more likely to increase than decrease, and there are many things which might be provided for the convenience of members if there was not this difficulty of want of funds. I think, too, though I have for this reason not liked to press the point, that the remuneration of the actuary is scarcely adequate to the increased amount and responsibility of his work. I also enclose, in case you have not a copy, the only copy I have, of the report of the Expenses Committee which dealt with this question. It seems to me that it would not be unreasonable to ask that 1,000 *l.* per annum should be appropriated out of the fee fund towards meeting the expenses of both convocations; 600 *l.* for the Lower House, and 200 *l.* for the Upper House of the Canterbury Convocation, and 200 *l.* for the York Convocation."

Then the letter from Mr. Philips to Mr. Cobb is as follows: "Dear Sir,—In reply to your inquiry respecting the expenses of the Convocation of York, I hasten to inform you that they amounted to 148 *l.* 18 *s.* 7 *d.* for the year ending 31st December 1875, and that there was a deficiency of 34 *l.* 8 *s.* 7 *d.* The expenses are met by rateable contribution from the members, and increase year by year. The assessment this year is as under: the president, the bishops, and deans of the province pay 5 *l.* each; the archdeacons 2 *l.* 5 *s.* each; and the proctors 1 *l.* 5 *s.* each. I am of opinion that some such scheme as you suggest would be approved of by the Convocation of York. The registrar of the diocese or his deputy is always present at the meetings of convocation, and has the custody of the Acts: he receives no remuneration whatsoever, as far as I am aware, for his trouble. This responsibility seems to devolve upon him by virtue of office and custom. Under the provisions of the Ecclesiastical Offices and Fees Bill it cannot be expected that the services of this officer (in future) can be retained on such terms, and to that extent convocation must suffer loss. I heartily wish the movement you are making may be successful."

I put these letters, if your Grace will allow me, in evidence, and with them I venture to place on the table a Draft Report of the Lower House of Convocation of the Province of Canterbury on the Expenses of Convocation;

tion; and I should like to take the opportunity of mentioning, with regard to the general assembly of the Presbyterian Church in Scotland, that the expenses of that body are defrayed by a grant of 1,100 *l.* a year from the consolidated funds. It seems to me only reasonable that the convocations of Canterbury and York should be considered, in arrangements of this kind for a re-distribution of the income arising from the ecclesiastical fees.

1567. It was stated in evidence by Mr. Dyke that he, as registrar of the Province of Canterbury, was expected to attend all the meetings of convocation of that province?

Yes.

1568. Who is the gentleman whose name you mentioned?

Mr. Philips; he is a clergyman holding a living in the province of York, and he has been acting as synodal secretary, I believe, since the resignation of Canon Trevor.

1569. He is not the registrar of the Acts of the York Convocation, is he?

I suppose, from his calling himself synodal secretary, he is the registrar of the Acts.

1570. Lord *Hatherley.*] I suppose the duty of attending the convocation of Canterbury on the part of the registrar is a duty attached to his office, and the increased pressure of that duty is simply occasioned by convocation meeting more frequently?

Yes.

[*The Witness hands in the following Statements:*—]

(1.)

The Dean of Lichfield wishes to state that the Archbishop of Canterbury, the Chairman of this Select Committee, when presiding over the Diocese of London in the year 1864, took much trouble in preparing Schedules, and bringing before Mr. Gladstone, the then Chancellor of the Exchequer, the state of the Stamp Laws as regarded the Presentation of the poorer Clergy to Rectories and Vicarages of 300 *l.* a year, and below that value. The beneficial result of his Grace's representation to Mr. Gladstone will be seen below:

1842 and 1843, and until 1864.

Sect. 5 & 6 Vict. c. 79, and 6 & 7 Vict. c. 72.

Presentation and Institution.

The Old Stamp Law.—Rectories or Vicarages.

| | £. | s. | d. |
|---|---|---|---|
| Benefice under the Value of 300 *l.* - - | 7 | – | – |
| Ditto - - ditto - - 400 *l.* - - | 12 | – | – |
| Ditto - - ditto - - 500 *l.* - - | 17 | – | – |
| Ditto - - ditto - - 600 *l.* - - | 22 | – | – |
| Ditto - - ditto - - 700 *l.* - - | 27 | – | – |
| Ditto - - ditto - - 800 *l.* - - | 32 | – | – |
| Ditto - - ditto - - 900 *l.* - - | 37 | – | – |
| Ditto - - ditto - 1,000 *l.* - - | 42 | – | – |

*Perpetual Curacies.*—Until the above law was altered, all Church preferment was not treated alike.

If a clergyman was nominated to a Perpetual Curacy (no matter how large the value), 1 *l.* 10 *s.* stamp duty, and 2 *l.* stamp on license was all that was required.

*E. g.*—The Perpetual Curacy of Saint James', Paddington, valued at 1,400 *l.* a year, only paid 3 *l.* 10 *s.* stamp duty.

Since 1864.

27 Victoria, c. 18.

Ecclesiastical Preferment.

| | £. | s. | d. |
|---|---|---|---|
| Where the Net Yearly Value of any such Benefice, Dignity, Promotion, or Perpetual Curacy shall exceed 50 *l.* and not exceed 100 *l.* | 1 | – | – |
| „ 100 *l.* „ 150 *l.* | 3 | – | – |
| „ 200 *l.* „ 250 *l.* | 4 | – | – |
| „ 250 *l.* „ 300 *l.* | 5 | – | – |
| and where such value shall exceed 300 *l.* - | 7 | – | – |
| and also (where such value shall exceed 300 *l.*) for every 100 *l.* thereof over and above the first 200 *l.* a further duty of - - - | 5 | – | – |

(2.)

The Dean of Lichfield ventures to suggest that when the Archbishop of Canterbury, the Lord High Chancellor, and the Archbishop of York come to meet, after the passing of my Bill to be recommended by your Select Committee, to revise Tables of Ecclesiastical Fees, under the existing Parliamentary Powers, some such Scheme as the Table hereunder written, may receive their consideration, so as to lighten the Institution and other Fees falling upon the poorer Clergy appointed to Benefices of 300 *l.* a year, and below that sum.

The Dean of Lichfield also suggests a Clause in the Bill to add the name of the "Dean of the Arches and Official Principal of the Chancery Court of York" to those of the three personages above mentioned, for the purpose of such revision.

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Proposed Amendment of Table of Ecclesiastical Fees on Institution or License to a Benefice to relate to all kinds of Ecclesiastical Preferment.

For existing Tables *see* "London Gazette," 24th July 1857.

| | Chancellor. | Registrar. | Secretary. | Apparitor. | Sealer. | Record Keeper. | Totals. |
|---|---|---|---|---|---|---|---|
| | £. s. d. | £. s. d. | £. s. d. | s. d. | s. d. | s. d. | £. s. d. |
| Where the Net Value of any such Dignity, Benefice, Promotion, or Perpetual Curacy is below 50 *l.* a year - | – 2 6 | – 2 6 | – 5 – | – | – | – | – 10 – |
| Exceeds 50 *l.* but not 100 *l.* - - | – 2 6 | – 2 6 | – 10 – | 1 – | – 6 | 1 – | 1 – – |
| „ 100 *l.* „ 150 *l.* - - | – 5 – | – 7 6 | – 15 – | 1 – | – 6 | 1 – | 1 10 – |
| „ 150 *l.* „ 200 *l.* - - | – 7 6 | – 10 – | 1 – – | 1 – | – 6 | 1 – | 2 – – |
| „ 200 *l.* „ 250 *l.* - - | – 10 – | – 10 – | 1 7 6 | 1 – | – 6 | 1 – | 2 10 – |
| „ 250 *l.* „ 300 *l.* - - | – 10 – | – 10 – | 1 17 6 | 1 – | – 6 | 1 – | 3 – – |
| When certified by the Ecclesiastical Commissioners to be 300 *l.* a year - | – 10 – | – 10 – | 2 7 6 | 1 – | – 6 | 1 – | 3 10 – |
| Exceeding 300 *l.* and not exceeding 600 *l.*, the same Institution Fees as settled by Order in Council of 1857 - | – 16 8 | 2 2 4 | 4 4 – | 3 6 | 4 6 | 2 6 | 7 13 6 |
| £. 600 a year, and all exceeding 600 *l.* a year in value - - - - - | 2 2 – | 3 3 – | 6 6 – | 8 6 | 5 – | 7 6 | 12 12 – |
| £. 800 *l.* a year, and all exceeding 800 *l.* in value - - - - - - | 3 3 – | 4 4 – | 7 7 – | 8 6 | 5 – | 7 6 | 15 15 – |

The Witness is directed to withdraw.

The Venerable Lord ALWYNE COMPTON, having been called in; is examined, as follows:

The Ven. Lord *Alwyne Compton.*

157. *Chairman.*] You are Archdeacon of Oakham?
I am.

1572. And that is a newly formed archdeaconry?
It is.

1573. How were the officers provided for that newly formed archdeaconry?
The previous registrar held his office by patent, that is the registrar of the old archdeaconry of Northampton; and when the arrangement was made for dividing the archdeaconry he did not resign that patent, and he continues as registrar of both the new archdeaconries.

1574. You probably have not had an opportunity of judging how far that arrangement is satisfactory yet?
I have no doubt it will be satisfactory, but I have had very little experience yet. My experience has been formed rather as a rector than as an archdeacon.

1575. Is Mr. Gates the registrar?
Yes.

1576. Is he also the registrar of the diocese?
Yes.

1577. Is

1577. Is he also secretary to the bishop?
Yes.

1578. So that he unites all these offices?
Yes.

1579. Does any inconvenience, as far as you know, arise from his being at once registrar of the diocese and registrar of the archdeaconries?
I do not believe so.

1580. Or from his having the two offices of secretary and registrar?
I believe not; I never heard of any.

1581. Where does he reside?
At Peterborough; I believe the present bishop has also appointed a secretary in London (I understand so), besides Mr. Gates

1582. Was that the case with the late bishop?
It was not the case before, I believe.

1583. You have had great experience in the feelings of the clergy in your neighbourhood; you were their proctor?
Yes.

1584. Have you had many complaints from them as to the fees?
I cannot say I have; but I know there is a good deal of feeling on the subject. Some of the fees are thought rather excessive. I cannot say I have had many complaints brought personally before me.

1585. Do you know at all which fees are felt to be most oppressive?
On the clergy I think the fees of institution and the like are felt a great deal; they are the chief fees that fall on them, and also I believe that the procurations and synodals in some cases are felt to be heavy, because they have no relation whatever to the value of the benefice.

1586. That is to say, they are based on the books of King Henry VII.?
I believe their basement is entirely unknown. I think their basement is ancient and customary, and I believe they are not based on those books. In some cases they are very heavy.

1587. With regard to the institution fees, do you think that the clergy distinguish accurately between the stamp to the Government and the payment to these officers?
I think possibly not.

1588. They are generally paid in a lump sum, are they not?
They are generally paid in a lump sum, I believe.

1589. Have you looked at the stamps to know whether they are higher than in your opinion they ought to be?
I have not formed an opinion upon the subject.

1590. Perhaps some of the fees that do not directly fall under this Bill are felt to be heavy; as, for example, those under the Dilapidation Act?
Yes, they are felt to be very heavy, indeed.

1591. Should you think it desirable that this Bill should deal with all fees that press on the clergy?
I think so, if possible.

1592. Should you think it well that they should be all taken in hand together?
I think so; but I see a great difficulty as regards the fees on dilapidations, *i.e.*, the fees to the surveyor; the fees to the bishop's secretary, and so on, might be dealt with, of course, under this Bill.

1593. Do you know how fees under the Dilapidation Act are imposed?
They are fixed under the Act by a meeting of archdeacons and rural deans in each diocese.

1594. That is to say, by the clergy themselves?
By the clergy themselves; and therefore they have no right to grumble at their being too heavy; but they do sometimes.

1595. Do you think that any plan could be adopted which might put an end to this feeling as long as payments have to be made?

The Ven. Lord *Alwyne Compton.*

27th March 1876.

I do not think so; I think the archdeacons and rural deans ought to modify all fees that have been found too heavy, which they might do under the Act; in other words, I do not think that the Dilapidation Act is to blame, but the working out of it.

1596. You were a member of the Committee of the Convocation of Canterbury, which dealt with this subject?
I was.

1597. Have you in your hands the Report of that Committee, which dealt with the subject of diocesan officers and fees.
I have brought a copy here.

1598. Is there any portion of it which you would like to put in your evidence. I see, for example, that that Committee recommended the abolition of archidiaconal courts, and other courts which are analogous?
It is quite my own view; but I ought to say that I formed that opinion before I was an archdeacon, and I have not had sufficient experience of my office yet to know whether I should modify that; but I know that the archdeacons generally hold that opinion in great dislike.

1599. What are the fees of the archidiaconal courts?
As I understand, there are various archidiaconal courts; and I believe the archdeacon's visitation is a court; and the archdeacons generally object to having that court abolished. It is a court for receiving complaints, and I believe in some way or other for investigating them; I do not know how.

1600. Do you, from your experience, think that the presence of the clergy and churchwardens at archidiaconal visitations is of benefit to the church?
I think so.

1601. Then you would not abolish their visitations?
No.

1602. Merely their courts?
My idea was to abolish merely their courts.

1603. And so far as the visitation was a court, you would not abolish it?
No, I think not.

1604. The archdeacons have certain authority over parish clerks; should you abolish that?
I see no object in abolishing that; I see no reason why it should not be retained; it is a very small point in itself, I think.

1605. As to the other courts, if they do hold any, you would abolish them?
I believe most of those other courts have ceased by statute; that is to say, that the various points that came before them have now been removed from their jurisdiction altogether.

1606. Of the two you would rather be disposed not to retain their courts if they hold any?
I am rather disposed to have one court for all contentious jurisdiction in the diocese, that of the bishop, and not that of the archdeacon; a single court for all. I may state that the report just alluded to is founded upon one in the diocese of Peterborough, which I, as chairman, drew up, and I think substantially I agree with the whole of it, *i.e.*, of the Peterborough report.

1607. *Lord Steward.*] What is the date of that report which you have just put in?
The Committee was appointed in 1873, and reported in 1874.

1608. Earl *Nelson.*] Would you put in the other report you have alluded to?
I have no hesitation to put in the report of the diocese of Peterborough.

1609. Lord *Winmarleigh*]. Can you say what would be the difference of expense in conducting a case in the bishop's court?
I cannot say.

1610. *Chairman.*] As a matter of fact, are there any causes tried in archidiaconal courts?
I cannot say positively; but I never heard of any.

1611. Did you recommend to convocation the annexing of the office of registrar to that of bishop's secretary?
Yes.

1612. Do you think that is a good provision in the present Bill?
Yes, I think one person is sufficient for all the work to be done by those two officers.

1613. I see that you recommend "a legal staff for each diocese, consisting of at least a chancellor, registrar, and an apparitor"?
Yes.

1614. You do not consider an apparitor such an abuse then as some persons do?
I think a single apparitor is a very proper person for keeping order in the court, and the like, instead of employing the police. He need not be a highly paid officer, but a respectable man, and one would be enough for the diocese. He would act at other times as assistant to the registrar probably.

1615. You recommend "that the visitations of the archdeacons and the offices of registrar, apparitor, seal keeper, and record keeper of archdeaconries be abolished, and their registries and records transferred to the registry of the diocese"?
Not the visitation abolished. May I ask where your Grace is reading from?

1616. From the report of a Committee to the convocation of Canterbury in 1874. At all events you do not now adhere to any such opinion, if you ever held it?
I would not abolish visitations; I should abolish the others, that is to say, where the same person was registrar of both the bishop and archdeacon.

1617. You mean that the functions should be performed by the diocesan officers, which is the proposal of this Bill?
Yes.

1618. It is not proposed in this Bill to abolish the offices, but to vest their functions in the diocesan officers?
That is quite my own idea.

1619. It is proposed also that the registrar and apparitor hold their respective offices during the bishop's pleasure; and this was the recommendation of the report; do you still adhere to that?
I feel great doubts about that.

1620. Perhaps you think that the secretary ought to hold his office at the bishop's pleasure?
No, I think the same person ought to be both secretary and registrar; and I am inclined to think that he ought to hold it during good behaviour.

1621. Not by letters patent?
I hardly know enough what letters patent are; but I think that he should hold it during good behaviour, and be dismissed if he did not perform his duties properly.

1622. Whom would you make the judge?
I suppose it should be done by the bishop for cause assigned.

1623. Lord *Hatherley.*] Would you be satisfied with that?
Perfectly.

1624. By the bishop on cause assigned in the order of removal?
Yes, if that is sufficient legal protection for his office. I think he should hold his office unless he failed to discharge the duties of his office properly, not at the pleasure of the bishop.

1625. *Chairman.*] You would not wish him to hold the office merely for his own pleasure?
No.

1626. You think it desirable to put an end to non-resident registrars acting by deputy?
Certainly he must do his work.

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1627. I see it is recommended in the report "that the person who holds the office of apparitor be also an assistant to the registrar in the performance of his official duties;" is that intended to mean in visitations and so on?

He would act as his clerk. Of course every registrar must have clerks under him to do his work, and one of these would be the apparitor, who would appear on state occasions as part of the court, and at other times be one of the registrar's clerks.

1628. Bishop of *Ely.*] Do you think it necessary that the registrar should attend in person at each archdeacon's visitation?

Yes.

1629. It would not do to send the clerk, you think?

No, I should think not; he might have a person duly appointed as substitute.

1630. Where there are several archdeacons in a diocese, you do not see why the registrar should not attend them all?

Not at all; the archdeacons must arrange amongst themselves; but it is provided in the Bill that the bishop may appoint several registrars, and that would meet the difficulty, if it arose.

1631. There is a limitation to that, however, on account of the sub-division of the salary?

Yes.

1632. *Chairman.*] Do you think it better that these persons should be paid by salary, or by fees?

By salary.

1633. Do you see any objection to the formation of a large fee fund out of which they should be paid?

I see, myself, an objection to the fee fund proposed by the Bill. I think that the fee fund should be diocesan.

1634. On what ground?

Because if you have a general fee fund, your fees must be uniform necessarily throughout the whole province, and I think fixing uniform fees for the whole province is likely to lead to great dissatisfaction. It has done so in one case, where, under the authority of an Act of Parliament, an uniform fee was fixed for visitations and other cases, the result was that the standard of the fee fixed for visitations was taken from the diocese of London, and it was very much raised in some of the other dioceses. If the fee fund is diocesan, each diocese would have its own system of fees sufficient for the work of the diocese.

1635. In your own diocese, are the fees diminished or increased by the change which has occurred?

They were increased, I believe; I do not know that it was to any extent.

1636. How would you provide for the provincial officers in case your view were carried out?

There might be a fee fund for the provincial fees; I mean fees paid in the Arches Court, and the like; and further, I should be inclined to tax the diocesan fee funds to exactly what extent might be necessary.

1637. You heard what was suggested as to the chancellors being taxed to pay the Judge of the Arches. What is your view on the subject?

I should be more inclined, as a permanent arrangement, to tax the fee fund for the payment of the Judge of the Arches, or any provincial payments that might be necessary, that could not be covered by other means.

1638. There seems to be a feeling on the mind of the clergy in many places against the payment of the Judge of the Arches from this common fund. Do you share in that?

I cannot say that I share in it very much; but I know it is a very common feeling.

1639. What do you suppose it is grounded on?

I do not think the clergy generally are very much pleased with the whole arrangement of the single judicial officer, for various reasons; some because it seems an abolition of the ancient jurisdiction of the two provinces, and others for other reasons.

1640. But

1640. But the objections arise from their general objection to the existence of the office, not from any impropriety in charging such an officer upon the General Fee Fund?

It is very hard to say, when people object to things, how much of their objection arises from one source and how much from another. I think the objection to the office underlies most of the others.

1641. Is there any other part of the Bill that you would like to draw attention to?

I should like to draw attention to the clauses which provide that the chancellors of the bishops and the vicars general of the provinces must be barristers-at-law of so many years' standing. I think with all possible respect for the legal profession, that a barrister-at-law is not always a man the most acquainted with ecclesiastical law; and ecclesiastical law, I conceive, is the law which chancellors mainly have to carry out; and I think the present provision of the Church is a far better one. It is provided in the 127th Canon, that "no man shall hereafter be admitted a chancellor, commissary, or official to exercise any ecclesiastical jurisdiction, except he be of the full age of six-and-twenty years at the least" (that I pass over); "and one that is learned in the civil and ecclesiastical laws." I think that is the proper qualification of a person filling one of these offices, and that the fact of his having been called to the Bar is no proof that he is the man best fitted for it. I think it is possible that there might be even ecclesiastical persons who might know more of ecclesiastical law than barristers of seven or ten years' standing.

1642. *Lord Steward.*] You would probably consider that the late Bishop of Exeter would have discharged the duties of chancellor of a diocese better than many barristers of 10 years' standing?

Yes.

1643. *Chairman.*] Perhaps you would think he would also have adorned a seat on the Judicial Bench?

Yes, but he was not called to the Bar; and therefore could not have been on the Bench.

1644. *Lord Steward.*] You would apply the same remarks, perhaps, to Dr. Gibson, a Bishop of London in the last century; before he was Bishop of London he was qualified to discharge the duties of these ecclesiastical offices?

Yes.

1645. Bishop of *Ely.*] Is it not the case that since Bishop Gibson's time, the law of the Church of England has become to an increased extent statutory?

No doubt; I am not sure that some of our evils do not arise from that very circumstance.

1646. Still, as a fact it is so?

Yes; but in the Ecclesiastical Courts the statutes upon ecclesiastical matters are interpreted on the principles of ecclesiastical law, and the same law underlies all the proceedings of the courts; in the common law courts the statutes are interpreted on the principles of the common law, and the common law underlies all their proceedings. It is the common law that is usually studied by barristers, not the ecclesiastical law.

1647. Therefore it would be necessary that a chancellor should be a man qualified to understand Statute Law?

Yes, to understand both. Of course the difficulty now is that some bishops may have appointed chancellors entirely ignorant of all law whatever; but I think the proper remedy would not be a call to the Bar, but some certificate either from the provincial judges or from the professors of law in the University, or something of that kind might be provided in the Bill, which would prevent improper appointments. And still more, I believe the thing which would most improve ecclesiastical matters, would be that the custom of carrying causes by letters of request from the chancellor of each diocese to the provincial chancellor or judge should be abolished, except in the case where the bishop was himself a party, or interested in the case; so that each chancellor should be obliged in the first instance to hear the cause. If that were the case, we should not have incompetent persons appointed to the office.

 1648. *Chairman.*]

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1648. *Chairman.*] Would not that have other disadvantages; for example, making three trials instead of two?

I believe lawyers say that a third trial is often a very valuable thing, and as a matter of practice it very seldom comes to a third trial; I have seen that stated lately, and I suppose it applies to ecclesiastical law as well as civil. I think, in many cases, the chancellor residing in the diocese and on the spot would give a judgment which would not be appealed against.

1649. Bishop of *Ely.*] You would object to taxing the chancellors to pay for the provincial judge?

As a permanent arrangement, I should.

1650. On the ground that the provincial judge ought not to be looked upon as a person to do their work?

Certainly not.

1651. And that it would be undesirable to initiate any legislation whose tendency should be to transfer the hearing of cases from the consistorial to the provincial courts?

Certainly, I think it would be most undesirable.

1652. Earl *Nelson.*] I want to ask you a question about procurations; is there not found to be a great difficulty in the collecting of procurations?

I do not think it is so with procurations; they are sums paid by the clergy, who are bound to pay them, and can be very easily compelled, because they have the means. The difficulty in the other case, that of the churchwardens, is that they have no means, and you cannot compel them.

1653. We have had it in evidence that it is a charge on lay rectors as well; is that so?

In some cases.

1654. Is it generally collected from lay rectors?

I do not know; I cannot answer the question; but in that case equally there would be no legal difficulty; there is a fund for it to come from, and it could be easily compelled in any court; and, therefore, I suppose it is collected from them.

1655. I see in this Report, which you have put in, from the Committee of Conference of the Diocese of Peterborough, that in one of the recommendations, namely, No. 7, under "Present Sources of Revenue," it is suggested that Queen Anne's Bounty should collect it at the same time that they collect the firstfruits and tenths?

Yes.

1656. Do you not think that the difficulty of getting the churchwardens and the parishes to pay any fee would be very materially overcome by the formation of a diocesan fee fund, if some representation of the churchwardens was placed on the management of that fund?

Yes, I think very likely. Our proposal was, that the management should include a certain number of laity.

1657. *Lord Steward.*] It is proposed in the Bill that the procurations and synodals payable to archdeacons should be abolished; that is in Clause 37?

Yes.

1658. There is no such provision with regard to the procurations and synodals payable to bishops; do you think there is any reason for that distinction?

I believe the reason is, that the bishops, as a matter of fact, do not receive them. I believe that if the bishop did receive them, he would have to pay them over to the Ecclesiastical Commissioners. The bishops, I have heard, object to being made collectors to the Commissioners.

1659. Is that any reason why you should retain the procurations to bishops, while abolishing those to archdeacons?

I think all procurations and synodals should be put on a proper footing, somewhat in the way already suggested by the Dean of Lichfield, by excluding small livings, and raising them *pro rata* on the large ones; and then they might be paid

paid to the fee fund. I think the more wealthy of the clergy might very fairly pay something towards supporting the necessary officers of the diocese, if the poorer were excused.

1660. Have you anything to say as to Clause 40, and the rules and orders which will be made under that clause?

I have already stated, I think, what I should like to say about that; that is to say, the great objection to having fees fixed by a single body for the whole of England as resulting either in this, that they must all be lowered to the lowest standard, in which case they might be too small, so that they must be put on the average standard, which involves raising those at present low, and therefore creating dissatisfaction. And I venture to think that the high officers mentioned in that clause might not know so much of the feeling in the various parts of England as persons in the dioceses themselves.

1661. Lord *Winmarleigh.*] How did you propose its being done in your Report?

We proposed that "all fees should be paid into a diocesan fee fund, managed by a diocesan board, consisting, it might be, of the bishop, the chancellor, the archdeacons, and the proctors in convocation for the cathedral chapter and the diocese;" and that these persons should have power to alter the fees from time to time, if found to be larger than was required for the work of the diocese; that is to say, taking the present standard of fees, that they should have power to lower them if found more than necessary; and with regard to particular fees, we proposed a new list, which would be fixed by the Act, of course.

1662. *Chairman.*] Have you looked at Clause 39?

Yes.

1663. You see that it is there proposed to have a meeting of the persons interested in these fees?

Yes.

1664. Would you think that the object that you have in view would be obtained by making the archdeacons, and perhaps also rural deans, members of that body?

Supposing it were finally settled that it must be a single body, I should think it would meet some difficulties; but it would not meet the point which I have mentioned, that you could not then avoid having an uniform standard.

1665. *Lord Steward.*] The beneficed clergy have no voice in the selection either of archdeacons or rural deans, have they?

No, except in the diocese of Exeter, where they select the rural deans.

1666. But, except in the diocese of Exeter, you can hardly say that the archdeacons and rural deans are representatives of the clergy?

Not as elected; but they are persons who would probably know pretty well the feeling of the clergy, and would be in sympathy with them.

1667. Still they are not appointed by them?

No.

1668. *Chairman.*] And they would not do so well as representatives, as the proctors in convocation?

I should think not.

1669. *Lord Steward.*] With regard to the proctors in convocation being representatives of the clergy, the bishops have a very large share in many dioceses in the selection of persons for proctors, is not that so?

In this sense it is so, that for two proctors sitting in convocation, the clergy elected may be four or six, and the bishops in some cases select them amongst those four or six. I trust that this may be changed; still they are persons selected by the clergy.

1670. But the bishops have a considerable voice in many dioceses in selecting out of those selected by the clergy?

The entire voice in some cases.

1671. *Chairman.*] You heard what was said by the Dean of Lichfield as to the payment of fees by churchwardens at the archidiaconal visitations?

Yes.

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1672. Did you assent to what he stated, that they were willing to pay them?

In many cases they are unwilling. It varies very much. I think it depends very much upon the personal popularity of the archdeacon. I think it depends also upon whether those fees have been increased by orders made by the proper authorities.

1673. In fact, your experience is not exactly the same as the Dean of Lichfield's?

No; I believe many in the diocese I belong to have refused to pay, and they cannot be compelled.

1674. Lord *Winmarleigh.*] Do the churchwardens generally attend the visitations?

They attend very fairly. I have had no visitation myself yet. They attended fairly, but not at all universally, in the time of my predecessor.

1675. Bishop of *Ely.*] Do you think the payment of a fee keeps them away?

Yes, I think so, decidedly.

1676. Earl *Stanhope.*] With regard to that clause about a barrister of 10 years' standing; who is to judge of a person being learned in ecclesiastical matters; the diocesan board?

No; the bishop, of course, appoints his chancellor, and I should propose that the person should be certified either by the provincial judge or by the professors of law in one of the universities, to be learned in civil and ecclesiastical law, and so forth.

1677. Would you apply that to the registrar?

I did not speak of the registrar, I spoke of the chancellor. I do not object to the registrar being a barrister; I object to the chancellor being one. The registrar is like a magistrate's clerk, but the chancellor, I think, ought to be a person such as I have described; then the registrar I would have as in the Bill.

1678. Do you think the registrar and bishop's secretary can be conjoined in one?

Yes, I see no objection at all; he is not the bishop's private secretary, he is a public officer, and many bishops have private secretaries besides, to write their private letters, generally some clergyman in the diocese. The bishop's secretary is acknowledged by Act of Parliament, and does official business; and I do not see why he should not be the same person as the registrar.

1679. Lord *Winmarleigh.*] In what Acts is he mentioned?

I do not remember.

1680. *Chairman.*] He is mentioned in the Dilapidations Act, is he not?

Yes; but he was an officer before that time, and was mentioned before. Then, I think, the 16th Clause (but I am not a lawyer) is capable of rather a strange interpretation. I think it might under that be possible for the same person to be both registrar and chancellor in the same diocese: "Nothing in this Act contained shall be construed to prevent any person holding the office of vicar-general of a province, chancellor of a diocese, or registrar of a province or diocese from holding more than one such office, if he be duly appointed thereto." I merely suggest, for the consideration of the Committee, whether there is not an indistinctness in the wording there which might be mischievous.

1681. Is there any other point which you wish to bring before us?

No.

The Witness is directed to withdraw.

The Reverend HENRY A. JEFFREYS, having been called in; is Examined, as follows:

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1682. *Chairman.*] You are one of the proctors of the clergy in the diocese of Canterbury for convocation?
Yes.

1683. And a rural dean?
Yes.

1684. And well acquainted with the general feelings of the clergy in your neighbourhood?
Yes, I think so.

1685. Do you think that there is a feeling in reference to the ecclesiastical fees, that they are somewhat heavy?
Yes, there is certainly a feeling on that ground, I think, especially with regard to the Dilapidations Act; they certainly think that those fees are heavy.

1686. With reference to the Dilapidations Act, the archdeacons and rural deans have the power of altering those fees at any time, have they not?
Yes; but then I advocated very strongly, as perhaps your Grace is aware, in our own diocese, that there should be surveyors of a less costly character. My endeavour was that there should be four local surveyors who would necessarily have done their duty at much less expense, but I was overruled and outvoted by the rest of the rural deans and the archdeacons, and they determined to have surveyors of a better character; that is to say, first rate persons. They said that you wanted a man who would build a parsonage for you. So that as soon as ever I was outvoted there I saw at once that they must pay at a very greatly increased rate for the surveyors. If we had had local surveyors the charges on the clergy would be much less; and I consider the working of the Dilapidations Act to be not in consideration of the poor clergy but of the richer clergy.

1687. Should you think it desirable that the fees under the Dilapidations Act should be brought under this Bill, which they are not at present; all the fees under the Dilapidations Act to surveyors, secretaries, and others?
That is not at present proposed by the Bill.

1688. No, unless the registrar and secretary; perhaps their payments may be under the Bill, but should you think it desirable that surveyors' fees should be brought under the operation of this Bill?
I am afraid I am not competent to answer that question; because you cannot bring every expense under the Bill; at least you must raise a very large sum of money, must you not for that?

1689. Have you heard of any complaint as to visitation fees?
I think there is a dislike to them: in actual fact, I have never heard of any difficulty about the clergy; but I think that the churchwardens are some of them very determined not to pay their visitation fees. In our own diocese, when the fee became 18 *s.*, I think our Archdeacon of Maidstone very wisely agreed that there should be no increase; so we remained at 10 *s.* About one-third of the parishes declined to pay that 10 *s.*; about one-third, I mean, in the Archdeaconry of Maidstone.

1690. Then, in point of fact, in the Archdeaconry of Maidstone the fee, being 10 *s.* for two churchwardens, is pretty nearly the same fee as is proposed under this Bill, namely, 5 *s.* for each?
Under this Bill, I think you will find it is 5 *s.* for both.

1691. Then do you think they would be more willing to pay the 5 *s.* than the 10 *s.*?
No; I think those who do not pay the 10 *s.* will not pay the 5 *s.* I think I may say that for certain.

1692. What will be the result of their refusing?
I think it would be a very inconvenient thing to make the appointment depend on that 5 *s.*

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1693. At present when a gentleman refuses to pay these 10 *s.*, how is he appointed to his office?

I think his office does not depend on his paying his 10 *s.*; he is appointed just like the rest; and after he is admitted by the archdeacon, the registrar offers him a receipt for 10 *s.*; and sometimes he declines to take it, and they are civil to one another, and so it passes off. I must disagree with Lord Alwyne Compton in what his Lordship said about its depending on their dislike of the archdeacon. My opinion is, that if they like the registrar, they object less to pay the 10 *s.* They say, "Oh, he is a good sort of fellow," and they give him the 10 *s.*

1694. And you do not think that if he were not a good sort of fellow, he would be more likely to get the 5 *s.*?

I think not at all, from many.

1695. Then it has been proposed by several witnesses that this should be altogether abolished, and that the office of churchwarden should be subject to no fee whatever; do you think that would be a good plan?

I am sure it would.

1696. Lord *Winmarleigh.*] You do not think that a fee, part of which should be returned to the churchwarden on his appearing at the archdeaconal visitation, would be a good plan?

The feeling of the churchwarden is this, they are very sore. "You have taken away our rate, we have a very invidious and difficult office to discharge, and we are met with difficulties on all sides," and therefore the present feeling in some parishes is this, that you will not get churchwardens without considerable difficulty. The old churchwardens go on; but as a very experienced churchwarden told me, you will find the sons will not do it. They do not like it, and they have no money. I have been lately making a visitation of the parishes in my deanery; and in several cases I came to parishes where they paid no fees, but the churchwarden was owed money.

1697. Do you not think feeling depends on the amount of the fee?

No, I do not think it depends in the least on the amount of the fee. I was told so by a very experienced churchwarden only last week.

1698. *Chairman.*] In the interest of the church, you would recommend the abolition of the churchwarden's fee?

Certainly.

1699. Rather than the abolition of the fees payable by the clergy, it being impossible to remit all fees?

What I meant to express to your Grace was that his appointment should not depend upon the fee. There is no reason why two-thirds of the fees should not be received as long as they are paid; but to make the appointment depend upon the fee would be, I think, very difficult indeed.

1700. Bishop of *Ely.*] The appointment does not depend on the fee now, does it?

No, but I think the proposition of the Bill is that it should.

1701. *Chairman.*] But you do not defend the present state of things, do you, in which the man pays or not, just as he happens to like the registrar or not?

I did not mean that exactly. The man pays if he has got any money; if he has got no money, I think that it makes a little difference; but commonly speaking, they say "there is no rate, and therefore there is no money."

1702. You heard what the Dean of Lichfield said as to recouping the churchwarden from public sources; did that approve itself to your mind?

Does your Grace mean that they should be paid for their expenses to go to visitations?

1703. No, I meant recouping them out of the offertory, or any other source at the command of the churchwardens?

I did not hear the Dean of Lichfield on the matter.

1704. He says that he saw no impropriety, but quite the reverse, in the churchwarden applying for the payment of his fee to any fund that was capable of

of being appropriated to the maintenance of the fabric or of the church services. Do you see no objection to that?

It depends entirely upon whether there is such a fund. If there is no such fund, if in some of the poorer parishes they collect such a very little that there is nothing even to do the most necessary repairs of the church, it could not be met in that way.

1705. How, as a matter of fact, in your own church, are the church services maintained?

We go on with the old church rate; there is no difficulty about it.

1706. Do any persons refuse to pay?

Yes, we lose about a sixth.

1707. You would see no objection to the fee being paid out of the church funds?

No, we never make any difficulty about that; the churchwardens are not only allowed the fees, but we pay them 2*l.* to go to the visitation for their expenses.

1708. Bishop of *Ely.*] If you pay them 2*l.* a-piece, the proposition of the prolocutor that they should have 2*s.* 6*d.* a-piece returned out of their expenses would not be much of a premium to them?

No, I think not; they are a very touchy kind of persons, and I think they would not like that sort of thing. They do a great deal for the church, those who do work for the church, because they wish to do something. They, generally speaking, help the poor clergymen to the visitation; generally speaking they take them in their carriage, or whatever the vehicle may be. They used to do so always till the invention of railroads. I was always taken by the churchwarden 24 miles to the visitation.

1709. *Chairman.*] Who is the registrar of the Archdeacon of Maidstone?

Mr. Cullen, I think.

1710. Does not Mr. Dyke attend the Archdeacon of Maidstone?

No, he never attends; Mr. Cullen is the person who attends.

1711. Have you any suggestion to make as to the diminution of the expenses incident on the clergy and others at present from these ecclesiastical fees?

No, I have not considered that subject, except in the case of the Dilapidations Act; and I feel that, as to those expenses of the surveyors, those who had the management of it have brought it upon themselves. I still think that by having simply surveyors who are sufficient to inspect and report upon parsonages for the repairs, that could be done at much less expense if persons of a humbler class were employed.

1712. That if the secretary's and registrar's fees under the Dilapidations Act are brought under this Bill, it would be well that the surveyor's fees should also be brought under this Bill?

If it could be done, it would be removing a very great difficulty. I thought I observed in the Bill one odd circumstance (I think in Clause 60), that the old marriage licences are permitted to remain where the surrogate was appointed before such and such a date; and then, in another part of the Bill, that they are to be reduced in your Grace's diocese to 2*s.* 6*d.*; whereas, at present, in our immediate neighbourhood, I rather think the licence for marriage by the surrogate is 4*l.*; it would be a strange thing if some surrogates were charging that sum, and in other places in the same county you could get married for 2*s.* 6*d.*

1713. You think that introducing a change would be very difficult as long as there are certain persons in office where they would charge the old fee?

I think it would be impossible.

1714. Are you a surrogate?

No.

1715. There is a surrogate in your neighbourhood, I suppose?

Yes, at Cranbrook; Mr. Carr.

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1716. Do you think that the number of surrogates in a diocese might with advantage be diminished, as far as you know?

I should have thought that there might have been some scheme devised by which there would be a very great difference made there. We think that we have so many marriages where persons go away from their parish church, and are asked in churches where they do not reside, and are married privately in that way to avoid the expense of the marriage licence; I suppose it is partly with a view to meet that, that it has been proposed to reduce the price of the licence to 5 *s.* I think if the marriage licence were reduced to 5 *s.* there would be a great many more licences taken out, and not so many marriages of that character.

1717. Bishop of *Ely.*] Is not the surrogate's fee different in different parts of the diocese?

I should have thought not in the same diocese. They vary very much in the dioceses; but I should have thought in the same diocese they were the same.

1718. *Chairman.*] You are not aware that this proposal to make the payment 5 *s.* has been made by way of equalising the payments in the county, with those which are made at the central office in London for the diocese of Canterbury?

No, I was not aware of that.

1719. In the central office 5 *s.*, as I understand, is the present fee, and it is proposed to make the payment in the country the same as at the central office?

I was not aware of that.

1720. *Lord Steward.*] Are you aware that the Royal Commission on the Law of Marriage proposed that all marriage licences should be abolished, and the fees consequent thereon?

No, I was not aware of that.

1721. Should you approve of that proposal?

I should have thought that it would be desirable that there should be something put in lieu of that; whether there could be any other permission obtained for a marriage would be a question to consider.

1722. That is another point; my point was that the plan of marriage licences, and all fees consequent upon that arrangement, should be abolished as far as possible; that was the recommendation of the Commission?

I should have thought that it was not desirable, unless there was some substitution. I should have thought it a very undesirable thing to remove marriage licences, unless there was, at the same time, something to put in their stead, because a large number of persons absolutely object to banns. Therefore, to take away marriage licences and put nothing in their stead, would annoy rather than help; and at the same time, by reducing the fees, would tend to reduce the sum so derived, which is very large; indeed, as we heard, it nearly pays the chancellor in each diocese. If you throw that money away, which at present is obtained without any difficulty, you lose a large sum.

1723. Do you see any reason why those persons who purchase an exemption from the necessity of having their banns proclaimed in church should provide a fund for the payment of the ecclesiastical officers throughout the diocese?

No, any more than the clergy who pays synodals.

1724. Why should fees be raised from persons about to be married any more than from persons about to be buried?

I should be afraid that that struck at the foundation of all fees whatever; and that is the idea of many persons, that they ought to be abolished throughout.

1725. *Chairman.*] Have you ever heard a proposal to abolish all these fees, and substitute a tax upon the incomes of all the clergy in their place, including bishops and everyone else?

No, I do not think I have. This marriage licence is not a tax upon the clergy, it is a tax on the laity.

1726. Are

1726. Are you aware that there is a feeling amongst the clergy against the payment of a salary to the judge of the province from this fee fund?
I cannot say that I am not aware of it.

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1727. Do you share it; do you consider that it is a reasonable feeling?
Really, if fees are to be collected, I do not know that there is anything unreasonable in such payment.

1728. Have you inquired whether the number of officers might be diminished with advantage?
I have not had any special opportunity of considering such a question; it seems very natural that it should be. I do not understand why there should be so many officers; I should have thought they might be reduced; I do not think that the archdeacons' courts are of any very great value; I cannot say that I think they are.

1729. You consider the archdeacon's visitation of value, I suppose?
Yes, certainly.

1730. That a great deal passes at the archdeacon's visitation which is very valuable?
Yes, I think so.

1731. Is there any other point which you wish to bring before us?
No.

1732. Lord *Winmarleigh.*] You think it very desirable that the churchwardens should be induced to attend the archdeacon's visitations?
Yes, I think, on all accounts.

1733. Do you think it tends very much to the conciliation of the persons who meet?
I think that it rather binds the body together; they are brought into contact. At present in our own diocese the archdeacon invites them all to lunch, and they pay a certain sum, 2 *s.* 6 *d.* Before, they used to dine separately from us, which was very uncomfortable; now they dine with us, or rather lunch with us, and the archdeacon provides the wine; and then he has the opportunity of mutual conference; and I think it certainly assists very much in encouraging churchwardens and enabling them to do their work with more heart. I think that is a very good thing indeed. They do not really always come, all of them, but one comes; I think Lord Alwyne Compton said they did not all come, and I have observed that they do not come always.

1734. You cannot tell, perhaps, what proportion come in your own neighbourhood?
The large majority of our churchwardens attend, and about two-thirds pay the fees.

The Witness is directed to withdraw.

The Venerable Archdeacon JOHNSON, is called in; and Examined, as follows:

1735. *Chairman.*] You are Archdeacon of Chester, in the northern province?
I am.

Ven. Archdeacon *Johnson.*

1736. How long have you held the office?
Five years.

1737. Have you held a visitation each year?
I have been inhibited twice by the bishop of the diocese.

1738. That is to say, the bishop has held two visitations?
Yes, two, I think.

1739. Does your archdeaconry extend over the old commissary's division of the diocese of Chester?
I am hardly able to answer that question. The Archdeaconry of Chester used

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to be very large indeed; before the dioceses of Manchester and Ripon were created, it went up as far as the Ribble.

1740. But at present it is more limited?
The whole of the county of Chester, with exception of what we call the "Wirrall," the district between the Mersey and the Dee.

1741. How many parishes are there in your archdeaconry?
A little over 200; I think 203 or 204.

1742. How many stations of visitations have you?
Seven; that is, I should have one for each rural deanery; but one rural deanery is a small one, and therefore it goes with another deanery.

1743. Do the churchwardens attend your visitations?
They do.

1744. They are present at the charge?
Yes.

1745. And do they pay their fees?
They do, most marvellously well. If your Grace would like me to do so, I can give you the facts.

1746. We should be very glad to have them?
On the occasion of my last visitation, from 193 parishes the churchwardens were summoned; 186 attended, and all paid their fee.

1747. And what was the fee; how much did it amount to?
Twelve shillings.

1748. That is lower than the statutory fee?
We never took advantage of the Order in Council, which, as you are aware, allowed us to raise it.

1749. Are you aware whether the churchwardens are recouped or recoup themselves for the fees?
They are, I fancy.

1750. From what source?
From whatever source they derive their other church expenses.

1751. And you do not consider that there is any impropriety in that?
I do not.

1752. Supposing it came from the offertory?
I should think it entirely legitimate; I have always considered so.

1753. If the persons contributing were aware of that, I suppose?
Perhaps I had better put it in this way; that I regard these as church expenses, like a great many other expenses that parishes have to incur, of a more or less similar character.

1754. Have you heard any complaint on the part of the churchwardens in your neighbourhood as to these fees?
The results, of course, will show that on the whole we really have very little complaint. But, of course, occasionally there is complaint; and the seven parishes that I alluded to, I have no doubt, would be parishes that absented themselves, because they disliked the payment of the fee.

1755. The town of Chester is in your archdeaconry?
Yes.

1756. Is there any other large town in it?
Such towns as Macclesfield, and Congleton, and Crewe, and Stockport.

1757. Do you find that there is any greater objection to the payment of the fees there than in the agricultural district?
Certainly not; I should say rather the other way.

1758. There must be many churches in these towns where there is no semblance of a church rate, I suppose?
Yes.

1759. How

1759. How are the church expenses paid, then?
I am not able to answer the question definitely; but I should think by voluntary rate. In my charges I always encourage the parishes to continue the rate, taking it as a voluntary rate from those persons who are willing to pay it; and the rest is made up from offertories, and sometimes subscription lists.

1760. Have you a registrar for your archdeaconry?
I have. It so happens that I had to appoint one within the last few days.

1761. Is he a solicitor?
He is.

1762. Have you an official principal?
No, I have not. I ought to explain that our diocese is peculiar so far as this, that the archdeacon does not summon the clergy, and the bishop never summons the churchwardens.

1763. So that the clergy do not attend your visitation?
The clergy do not attend. I always like to invite the rural dean to be present at my visitation; he then is able to look over the papers with me; and when there is anything personal or that wants talking over, I have the benefit of his advice or information, and he also has the benefit of hearing what passes between me and the churchwardens; the clergy as well occasionally attend to hear what is going on, I think.

1764. Do they pay procurations to you?
No, they do not.

1765. Are there no annual procurations and synodals in your archdeaconry?
We collect certain procurations and synodals for the Ecclesiastical Commissioners.

1766. But that is for the bishop, I suppose?
I suppose that is the remains of the episcopal charge.

1767. That is once in three years?
I cannot say for certain whether we collect it every year; but I know we do occasionally collect for the Ecclesiastical Commissioners.

1768. *Lord Steward.*] How is your archdeaconry endowed?
Partly from the fees and partly from the Ecclesiastical Commissioners.

1769. *Chairman.*] They make it up to 200 *l.* a year, nominally?
Yes.

1770. Do they really make it up to 200 *l.* a year?
Yes.

1771. But not more?
Yes, I have had more; that is in years that I have had visitations; but then every third year I lose my fees, because I am inhibited from holding visitations.

1772. Are you aware that certain archdeaconries have a good deal more than 200 *l.* a year?
I am aware of that.

1773. Could you mention any archdeaconry which, in your knowledge, is above that value?
No.

1774. Besides those endowed with canonries, there are certain archdeaconries having estates and so on, which they have surrendered to the Ecclesiastical Commissioners for payment?
I rather think, in the northern province, you would find it to be the case with the Durham archdeaconries; but I am speaking rather off-hand here.

1775. You have not, perhaps, examined the clause by which, in this Bill, the Ecclesiastical Commissioners are empowered to make up for the deficiency of those under 200 *l.* a year?
Yes, I have.

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1776. Do you approve of that clause?
Indeed I do.

1777. But might it not be unfair to those which at present have more than 200 *l.* a year, seeing that they would lose their procurations and receive nothing from the Commissioners?
But is there not a clause which gives compensation?

1778. To the existing holders?
If that be the case, if the existing holders are compensated, I hardly think there would be any injustice for the future.

1779. The Archdeaconry of Essex, I think, you will find is such an archdeaconry?
I am afraid I have not gone into the circumstances of other dioceses.

1780. But provided the existing holders are compensated, you do not see any injustice in reducing the payments to their successors?
No, I do not.

1781. Bishop of *Ely.*] Is your registrar registrar of the diocese also?
He is.

1782. Then you do not see any objection to uniting the offices of diocesan registrar and archidiaconal registrar?
Certainly not in our case; I think rather the contrary.

1783. And yet you have a great many centres of visitation?
I have seven.

1784. And the diocesan registrar finds himself perfectly able to attend your own visitations at those centres?
I should say that up to quite lately there were partners, that is, two members of a firm, and, therefore, there was always one or other able to attend. The one whom I had employed as my registrar when I was first made archdeacon died about a fortnight ago, and I have just appointed his survivor, who is now the only registrar.

1785. Is he the registrar of the other archdeaconry as well?
I rather think the other archdeacon has appointed him as well.

1786. Therefore one man does the work of diocesan registrar and the work of registrar of the two archdeaconries?
He does.

1787. And no difficulty arises?
I think no difficulty will arise provided he is always resident in the diocese.

1788. Lord *Hatherley.*] Do you think that the archdeacon would get all the advice of which he now has the benefit, if it were one function?
Yes, if I may put in that proviso, that he is on the spot; otherwise I should feel that anything like a non-resident registrar would be fatal.

1789. *Chairman.*] You never had a non-resident registrar?
Never.

1790. Lord *Hatherley.*] I suppose there is no difficulty in a registrar, though appointed by the bishop acting for the archdeacon?
I do not see that there would be.

1791. Lord *Winmarleigh.*] Supposing the registrar were not resident, to whom would you apply for advice in questions of difficulty?
I think all our work would break down simply from the fact of his not being at hand. I believe the success of our work arises from all the officers being on the spot.

1792. *Chairman.*] Is your registrar also secretary to the bishop?
Yes.

1793. So that he unites all the offices proposed here to be united?
Yes.

1794. And

1794. And perform the duties satisfactorily?
Yes.

1795. Lord *Winmarleigh*.] Where does he reside?
In Chester.

1796. Where do you reside; how far from Chester?
Some distance north of Chester, but within easy access by rail, and I am in constant communication with him.

1797. Earl *Stanhope*.] Has he a permanent registry office?
Yes, rent free.

1798. *Chairman*.] Does that belong to the office or to the man?
It belongs to the office.

1799. Are you certain of that?
The registry belongs to the office, because the records are kept there.

1800. Lord *Winmarleigh*.] It is available for all registrars, you think?
Yes, whosoever is registrar takes possession of that building.

1801. *Chairman*.] Are you certain of that, or do you take it for granted?
I think I may be quite certain.

1802. In whom do you suppose it is vested?
That I cannot say.

1803. Is it part of the cathedral?
It is over the abbey gate.

1804. Then it is probably part of the cathedral buildings?
No doubt it must be.

1805. Do you consider that the clause of this Bill would transfer that to the Ecclesiastical Commissioners?
I have not considered that.

1806. You do not suppose, do you, that the Bill would transfer it to the Ecclesiastical Commissioners?
I am not able to say upon what terms the registrar occupies this office.

1807. As a matter of fact every registrar has it, you say?
Certainly; and I know for many years that has been so.

1808. Bishop of *Ely*.] The proctors in the north are elected by each archdeaconry; who pays the expenses of citing the clergy and of the election of proctors?
I rather think that that is done by the candidates; probably their friends help them.

1809. But this registrar cites them?
Yes.

1810. And attends?
Yes.

1811. *Lord Steward*.] Is the Archdeaconry of Chester an old archdeaconry; does its foundation date back to the foundation of the See of Chester?
I rather think it does, but I am afraid I cannot tell you very much on the subject; I know that when the see was founded the first bishop retained in his own hands all the functions of the archdeacon.

1812. How came they to be in his own possession; was he archdeacon before he was made Bishop of Chester?
Certain old records and books tell us that the bishop had such influence at Court that he was able to get possession of the emoluments as well as the functions of the archdeacons.

1813. Might not this confusion to which you refer about the procurations, and also the fact that the bishop does not summon the churchwardens, and that you do not summon the clergy, arise from this confusion of jurisdiction dating from the foundation of the See of Chester?
No doubt.

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1814. It was stated by the Dean of Lichfield in his evidence, that the present emoluments of the chancellor in the diocese of Chester largely exceeded those of some others; can you give any explanation of that circumstance?

I think it arises from the fact that, in the first place, ours is a very large diocese, population increasing very rapidly, a great deal of work to be done, and, further, the fees are very moderate, that the chancellor is resident in the diocese, and always on the spot.

1815. Do his emoluments come from the issue of faculties, or from marriage licenses chiefly?

I am not able to answer that question.

1816. You cannot give us the proportions?

No; but a very considerable number of faculties are issued by him.

1817. *Chairman.*] I presume that with regard to the town of Liverpool, all persons married by license in that town pay to the Chancellor of Chester?

Yes.

1818. And that of itself would account for a large amount?

Yes.

1819. *Lord Steward.*] Can you tell us, in your archdeaconry, how many of the 196 livings which I think you stated are comprised in it, are of new foundation?

I am afraid it would be a guess if I were to attempt it.

1820. But a very large proportion of your parishes would have been founded within the last forty-five years?

Yes, certainly; a very considerable number.

1821. Therefore the procurations and synodals would only be due from the mother church?

Yes. There is one parish that has between 20 or 30 townships, and I swear in sidesmen for each one of those townships.

1822. With regard to the livings in the diocese of Chester, at the time when the valuation was fixed for procurations and synodals, the area now covered by the diocese was sparsely populated?

There would be a certain number of livings with large incomes.

1823. Are you acquainted with the taxation of Pope Nicholas?

No, I am not.

1824. *Chairman.*] Are you aware that in Archbishop Sumner's time, when he was Bishop of Chester, 240 churches were consecrated?

Certainly.

1825. These would mostly be new parishes?

Yes.

1826. All the old rules as to church rates and procurations and synodals would not apply to them?

No.

1827. I see, looking at the list of the chancellors' emoluments, that the emoluments of the Chancellor of Chester are given at 648 *l.* per annum, those of Manchester at 578 *l.*, and those of London at 590 *l.*, far in excess of the generality of chancellorships; how do you account for that?

I think, as your Grace remarked just now, it must arise from the number of marriage licenses; but I think also it will be found that there are a very considerable number of faculties issued from our consistorial court.

1828. Does the Chancellor of Chester sit often in court?

I am not sure how often; but he does very often.

1829. What does he do?

There is always work coming before him; faculties are wanted, for instance, for alterations in churches; that is one of the things I am very anxious for the churchwardens to understand; and they now, I hope, do thoroughly understand that a faculty is acquired, not with a view of restraining them, but for their own protection.

1830. Where

1830. Where is his consistorial court?
At Chester.

1831. In the cathedral?
In the cathedral.

1832. Does he hear other than contentious cases, and does he issue faculties sitting in the cathedral, if there is no contention?
Yes.

1833. That may account for it; other chancellors generally do it in their registry office, I think, or their private house; then the proceeds of the Chancellorship of Chester exceed those of London; now the population of Chester is not comparable to that of London; can you suggest how that arises?
I am afraid I ought not to answer for the chancellor; of course I do not quite know the circumstances of his office, except that I do certainly know that he does a very great deal of work, that a great deal of work comes before him; and I believe the fact of his being on the spot, and going down as he does very often to look into difficulties which arise about faculties, and so on, is a great benefit.

1834. *Lord Steward.*] Is he a barrister-at-law?
He is a clergyman.

1835. *Chairman.*] As also was his predecessor, Chancellor Thurlow?
Yes.

1836. Do you consider that advantages arise from his being a clergyman rather than a barrister?
I think so, certainly, as matters stand. I may be allowed perhaps to put it in this way: that if the chancellor were a barrister I should certainly hope that he would be resident, that is accessible; that is most important, I think; and that if the chancellor be a barrister, then the archdeacons' courts should not be altogether swept away.

1837. *Lord Steward.*] Do you think that if the chancellor were a barrister you would get as able a man for the remuneration proposed under this Bill, as you do now that he is in holy orders?
I think it is one of the blots of the Bill; I am afraid it would be quite impossible.

1838. *Chairman.*] Is it usual for chancellors to be resident in the diocese in your experience generally?
I am afraid not.

1839. You think that legal chancellors are generally non-resident?
I think they must be under the provisions of the Bill.

1840. Of course, if they are practising barristers, they must reside in London?
Yes.

1841. Do you know of any other ecclesiastics who are chancellors in England, besides the Chester one?
Your Grace probably remembers Chancellor Burton, of Carlisle.

1842. He resides in Carlisle?
Yes.

1843. And he is an ecclesiastic?
Yes.

1844. *Lord Steward.*] Do you remember the late Chancellor of the Diocese of Exeter, Mr. Martin?
No; the Chancellor of Durham must be a lawyer, I suppose; but the person who does the work is a clergyman, Canon Cundill, at Durham.

1845. Lord *Winmarleigh.*] In case of a difficulty with your chancellor, whom have you to apply to in point of law?
The person that I apply to is my registrar to begin with: he gives me his advice, and the clergy go to him any day they like.

1846. But supposing the chancellor has something to decide in which a matter of law is involved, to whom would he have recourse?
That I can hardly know; he would take advice, I suppose, as he found it necessary.

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1847. *Chairman.*] The difficulty arises from this: several of the witnesses have stated to us that the chancellor has no judicial duties to perform at all; that, as a matter of fact, except the formal duties of his office and giving private advice to the bishop, he does nothing; but the Chancellor of Chester appears to sit in court once a fortnight, does he not, or something of that sort?

Matters of faculty are coming before him continually.

1848. The Committee do not quite understand how the Chancellor at Chester has so much more to do than any other chancellor?

I feel that I really ought not to speak of other dioceses; but I confess my impression is very much this, that in many dioceses a very great deal is done throughout the diocese which ought not to be done without proper supervision; and I venture to hope that our own churchwardens have got to see that, whenever they want anything done, they must either ask me whether it may be done, or they must go to the chancellor.

1849. Then you are strongly in favour of the chancellor being a resident officer?

I think everything depends on it.

1850. Lord *Winmarleigh.*] Suppose a churchwarden wants the advice of the chancellor, in your diocese does he get that with a fee of any kind?

If it comes regularly into court, then he has fees to pay, and those fees have been very much reduced. I could have brought you our scale of fees, and they are so reasonable that, even if it is a small thing that has to be done in a church or in a churchyard, the people have got to feel that it is worth their while to get the protection of a faculty before they begin to do it.

1851. May not that system which you have just described be one of the causes why the salary of the Chancellor of Chester is much higher than in other dioceses where such a practice does not seem to prevail?

I have no doubt it is an element in the case.

1852. You do not know the nature of the fee that would be required for any advice he would give to a churchwarden?

I know he would charge nothing, unless it had to come definitely before him in court.

1853. You never found any objection on the part of churchwardens to that mode of transacting the business?

Certainly not. I think the reason why they pay their fees so readily is that they believe that we exist for their benefit, and that in the course of the year they get a *quid pro quo.* They know that they can refer to us for advice without any charge, and so forth.

1854. Is it not the fact that the attendance of churchwardens has been more regular since you have been archdeacon?

I believe, on the whole, it has always been fairly satisfactory with us.

1855. Bishop of *Ely.*] Does the Chancellor of Chester in any way act as legal adviser to the bishop?

I am perhaps hardly able to answer that; I think that he only acts in his court as the bishop's official.

1856. In Chester, then, if the bishop wants legal advice on any point, he must have recourse to some other person than the chancellor?

It would be his secretary first of all, and then, I imagine, he would go elsewhere.

1857. Therefore the chancellor does not act as legal adviser to the bishop?

I should say not, excepting in an informal way.

1858. *Chairman.*] Then it is not the fact of the chancellor being an ecclesiastic, but of his being resident, that appears to you important?

Certainly his being resident is the chief point; but I confess I think there is a good deal in the other point as well. If I may say so, both as regards myself as archdeacon and as regards the chancellor, things get settled without their becoming law suits, and that appears to me very desirable; but if you go to a barrister it becomes a question of law.

1859. Bishop

1859. Bishop of *Ely.*] Do you think that the churchwardens have recourse more freely to the clerical chancellor than they would to the legal chancellor?

I think it would depend upon whether they got the advice for nothing, which they do now. I have settled some very delicate matters as archdeacon which would have cost thousands of pounds if they had been allowed to get into court.

1860. *Lord Steward.*] Is there an apparitor attached to your court?

We have abolished our apparitor long ago; we wish to make everything practical.

1861. *Chairman.*] Who keeps order in court?

The registrar's clerk always goes about with us.

1862. Is he not paid for it?

We pay him something.

1863. Pay him yourselves, but not by a fee, do you mean?

No fee. There is a 3 *s.* 6 *d.* fee which the Order in Council allows us to charge, but we never charged it.

1864. *Lord Steward.*] It has been stated that the fees received by the apparitors in England and Wales amounts to 1,656 *l.* 13 *s.*, divided between apparitors and seal-keepers. There are 56 archdeacons in the Province of Canterbury, and 14 in the Province of York; if you divide the amount named by 70, being the number of archdeacons, I think it works out to 16 *l.* 13 *s.* each. Does that present itself to you as an exorbitant sum for such an officer?

I think it is absolutely requisite that you should have some one besides the registrar.

1865. *Chairman.*] To keep order in court do you mean?

I think that is the smallest portion of the work; it is the giving out of the notices, the posting your letters, and various things you want done; you must have somebody with you.

1866. Do you hold any courts besides your visitations?

I suppose I do not. I am not quite sure what I am to understand by a court; I hold courts of inquiry.

1867. That is, on commissions you mean?

No, not necessarily.

1868. What sort of courts?

For instance, if a presentment is made, I appoint a day upon which I will come into the parish, and I suppose I ought to use the expression, hold a court; that is, a court of inquiry into the matter.

1869. *Lord Steward.*] Into the presentment made?

Yes; and sometimes they are very important ones. I imagine I am right in calling that a court.

1870. Lord *Winmarleigh.*] If the court was done away with should you have any power of conducting inquiries?

It is a question which I am very anxious to bring before your Lordships. It seems to me of the utmost importance that we should retain that power of going down into a parish and summoning people, and putting them upon their oath, for the purposes of inquiry; in our diocese it does a very great deal of good; but for all other purposes I should like to leave it to the Consistorial Court.

1871. *Chairman.*] Would this meet your views: "Nothing contained in this section shall be construed to prevent any archdeacon from holding his usual and accustomed visitation courts and visitations, whether general or parochial, or from giving all lawful directions at or in relation to such visitation courts and visitations, or from exercising any authority in his archdeaconry which he might at the passing of this Act exercise personally and without process of court"?

I have marked that as desiring to know what is meant "by without process of court." I should like to know whether that means that I am no longer able to put persons upon their oath and to take evidence.

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1872. No. It says first, that you may retain all powers which you have at present in connection with the visitations; and then it says that these powers may be exercised either in or out of court, does it not?
I really am ignorant of the meaning of that phrase.

1873. You think it is obscure?
I hope that it does still leave us the power of going to a parish and making a formal inquiry.

1874. *Lord Steward.*] If it limited your power in any way of administering an oath and obtaining evidence in that manner, you would deprecate it very strongly?
I should.

1875. *Chairman.*] Do you mean that you go down to a parish and administer oaths, without holding a regular court?
No; but if the court is to be abolished, I should like to be able still to retain that power of taking evidence.

1876. But do you administer oaths in your parochial visitations?
Under certain circumstances we do, especially if it is a case of parish clerks.

1877. *Lord Steward.*] Are your acts that you do these acts of record?
I suppose that would be the proper term for them.

1878. *Chairman.*] Does the registrar attend you?
If we consider it of sufficient importance he does.

1879. Lord *Winmarleigh.*] With regard to the procurations and synodal fees, have you any opinion to give the Committee upon these; the application of them?
I stated to you just now that, as regards the archdeacons, we do not receive any synodals or procurations, but that we receive them, not every year, I think, but occasionally, for the Ecclesiastical Commissioners; I think there is great objection to it then.

1880. What would you suggest?
It is difficult for me to answer that question; it is a question for the Ecclesiastical Commissioners, I think, rather than for us. The point, I think, is this: Englishmen do not like to pay money when they do not know what it is for, and when they do not see that they get any return for it. These fees are not understood; I hope they really do understand the fees they pay to the archdeacon and the registrar.

1881. *Chairman.*] Is there any other point you would like to mention?
I wish to draw the attention of your Grace to Clause 16, which touches the point to which I have already alluded, and which seems to me to be a very important one, that the registrar should be resident. If he is to be allowed to hold other offices, I suppose it means offices in other dioceses.

1882. You wish to express a strong opinion against a man being registrar of more than one diocese?
I do.

1883. Do you think that the clause, as it is worded, allows a man to be registrar of more than one diocese?
It seems to me that it does.

1884. What clause is it?
Clause 16.

1885. Earl *Nelson.*] Your observation would apply to a chancellor as well as a registrar?
Yes, certainly.

1886. *Chairman.*] Do you object to a man being chancellor of more than one diocese?
Indeed I do.

1887. How do you suppose that a man of eminence is to be retained as chancellor of such a diocese as Salisbury, which Dr. Deane told us he held at an

an income of something like 60 *l.* a year. The case of Chester is an exceptional one probably?

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I only feel that it would be disastrous to our diocese, especially considering that the archdeacon does not summon the clergy to his visitations.

1888. In fact you think that the Chancellor of Chester is a peculiar officer altogether as compared with other chancellors?

Undoubtedly he is; and I think that whatever peculiarities there are, are certainly very beneficial.

1889. You mentioned the Chancellor of Durham, Mr. Headlam, who has recently died, was Chancellor of Durham, and, as you are aware, lived in London for a very large portion of the year?

Yes, he did; he performed his work by deputy.

1890. Do you think that a good plan?

No; but I think it is what must take place if the person lives elsewhere, especially under the Public Worship Regulation Bill, because churchwardens are continually wanting faculties for doing all sorts of things, as I said just now, and they have been educated to think (in my opinion very rightly) that they ought to apply for a faculty for anything they want to do. We have had some very delicate cases indeed in consequence of things being done without faculties having been obtained.

1891. Lord *Winmarleigh.*] Did you say that you are inhibited from summoning the clergy to your meeting?

No; that is a matter of custom rather. They are summoned when the bishop comes.

1892. Supposing you did not receive that inhibition, should you summon the clergy as well as the churchwardens?

I never summon the clergy.

1893. I understood you to say that you did not, because you are under an inhibition?

I am under an inhibition even to summon the churchwardens when the bishop goes round.

1894. You are not under a special inhibition to summon the clergy?

No; I imagine the bishop could give me authority to summon the clergy if he thought fit.

1895. Then it is a mere matter of custom?

Yes.

1896. Lord *Hatherley.*] The holding of the bishop's court at once suspends all inferior courts?

It does.

1897. *Chairman.*] Is there anything else which you wish to direct our attention to?

I have already referred to Clause 16, but I wish to say a word upon Clause 40. Feeling most anxious to retain the diocesan character of our office, it seems to me that Clause 40 leaves the directing of all that has to be done by the diocesan officers to the persons who are to frame the rules and orders, which will make the diocesan officers provincial officers, rather than diocesan officers.

1898. You share, in fact, the objection of Lord Alwyne Compton upon that subject?

I forget exactly how he expressed it, but the diocesan character of our framework, if I may use the expression, is to me of the greatest importance.

1899. You think it would be better that the rules and orders should be issued for each diocese by some central diocesan authority?

Indeed I do; the circumstances of dioceses vary so much; and in like manner again, as regards the payments, I think that to bring the old ecclesiastical offices under the direction of the province is, I was going to say, almost a revolution of our Church organisation, and in my opinion a hazardous experiment. I think that the whole thing would be met in a much better spirit by the clergy if it was diocesan.

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1900. Do you not think that the meeting of the persons interested each year to represent any feelings that they had would meet your difficulty?
I think, hardly. Sub-section 3, of clause 40, seems almost to imply that the very articles of inquiry, and things of that kind, must all come from the persons who framed the rules and orders; and I confess, from my own experience, having very carefully framed our articles of inquiry with reference to the rural deans' inquiries, and so on, I think it would be a great pity to interfere with the diocesan arrangements. We have revised all that very carefully, because the old articles of inquiry required revision undoubtedly.

1901. What are the words you refer to as affecting the articles of inquiry?
These persons are to meet "for prescribing the number, form, and character of the documents prepared by the registrars of provinces or dioceses." My registrar, of course, prepares my articles of inquiry and all documents that I send out. I confess I should hardly like to feel that I lost all that entirely.

1902. Do you think it is customary for the registrar to prepare the articles of inquiry for the visitation. I always understood that the bishop prepared them himself, at his own visitation?
Yes, at the bishop's visitation; that is the case undoubtedly.

1903. Why should not the archdeacon do the same. I do draw them up?
This seems to say that it is to be done by the provincial officers.

1904. I should have doubted whether the articles of inquiry fell under that head; but it is a most important point, and I am glad you have called our attention to it?
I think it is a point well worthy of consideration.

1905. Earl *Nelson.*] When such a thing as drawing up articles of inquiry had to be done, either by you or by the bishop, you would naturally do it through your registrar, and by his advice, I suppose?
Certainly. Then he would prepare them and see that they were issued.

1906. *Chairman.*] Is that the custom in most dioceses; my own impression would be that the articles of inquiry at the bishop's visitation are drawn up by the bishop, and that he simply hands them to his secretary to have them printed?
Upon the passing of the Dilapidation Act I revised my articles of inquiry, and introduced a special inquiry into them.

1907. You are afraid that this clause would interfere with your liberty of action in that matter?
I think so; my point is that it seems to bring us under the provincial authority, rather than that of our diocesan, and that is a thing which I am afraid I am rather jealous of.

1908. It is a very important point to draw attention to?
With regard to Section 1 of Clause 40 of the Bill, "for prescribing the duties to be performed by any person in respect of any office or employment for which he receives a salary, or other sums of money under this Act," I do not know whether that applies to us as archdeacons.

1909. Lord *Winmarleigh.*] Your district only comprises the county of Chester, it does not extend at all into Lancashire, does it?
No.

1910. Being so near, can you speak at all as to the practice in the diocese of Manchester, as well as in that of Chester, as regards the archdeacons' visitations?
They summon the clergy.

1911. Can you state from your knowledge whether the same practice with regard to churchwardens exists in Lancashire; that they attend the meetings?
They attend both the bishop's and the archdeacon's visitations.

1912. Can you speak as to the habits of the churchwardens in attending those visitations?
No, I am afraid I cannot; I can speak of the archdeaconry in our diocese, which includes Liverpool and all that populous district, up to Wigan.

1913. Does the same system prevail there?
Yes, they attend there as well as in Cheshire.

1914. How many archdeaconries does that take in?
We have only two archdeaconries in the diocese.

1915. Your diocese does not go up to Lancaster, does it.
No, that is in the diocese of Manchester.

1916. What district of country in Lancashire can you speak to?
The district which includes Liverpool and Birkenhead, and all up to Wigan. Wigan is in the diocese of Chester; the population of that archdeaconry is about 1,000,000. With regard to that district, I can say that the visitations are equally well attended by the churchwardens. My impression is that only about 13 absented themselves last time.

1917. Can you speak as to any benefit arising from the meeting together of the churchwardens, the clergy, and the archdeacon?
Yes, as to churchwardens I think it is very important. The articles of inquiry have all been carefully drawn up, and they relate entirely to really practical questions; I draw attention to things that have to be attended to; they make their presentments, and I look over every paper while they are there.

1918. And you think that the same practice prevails in the district to which you have just alluded as in your own district?
Yes.

1919. Do you think that that depends at all upon the archdeacon himself, and on the mode in which he transacts his business?
I think it may perhaps arise from the way in which you teach the wardens to think of you; I do not give them any luncheon, or anything of that kind.

1920. Earl *Nelson.*] If there is to be a fee fund, you would prefer the formation of a diocesan fee fund to a general fee fund?
Indeed I think I should.

1921. *Chairman.*] Is there any other point you would like to mention?
I should like to draw your attention to Clause 42, with reference to the churchwardens' admission. At present, as your Grace may be aware, the document under which we admit churchwardens is signed by the clergyman of the parish and the outgoing wardens. The outgoing wardens are the proper persons to present their successors to the archdeacon for admission, and I never admit any warden unless the paper which he brings to me has the signature of the clergyman and of the outgoing warden. I think it is exceedingly important that the signatures of the outgoing wardens should be added to the signature of the chairman of the vestry.

1922. What are the advantages of it?
One of our duties is to ascertain that the elections have been properly conducted; and I am sorry to say that one's experience leads one to know that the chairman of a vestry may sometimes do things which he ought not to do, and the declaration may be signed by persons who are not authorised to do it. I confess I see very considerable difficulty in altering the law in this respect.

1923. Do you suppose that that custom prevails in all archdeaconries, or is it peculiar to Chester?
I think it must be universal. If your Grace would like to see a specimen of the document under which I admit churchwardens, I have brought one with me (*producing a paper*).

1924. Perhaps you will put it in your evidence?
I will read the material parts of it. This is one which I just happened to lay hold of; it was presented some years ago; I do not know whether there would be any objection to my putting it in. It is addressed to me, and the form is this: "We, the minister and churchwardens of" a certain parish, "in the county Chester, Archdeaconry of Chester, do hereby certify that the following persons were on" such and such a day, "elected to serve the office of wardens and sidesmen respectively of the said parish, for the year ensuing." Then the names of the two new wardens are put in, and then the names of the new

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sidesmen, and that is certified by the signature of the minister of the parish and the old wardens. I do not admit wardens or sidesmen if this paper is brought without the signature of the minister and the two old wardens, because without that I do not know that it is a valid document.

1925. Is there any other point which you wish to refer to?
As regards the declaration, I think we see difficulties about the distribution of these declarations to the vestry.

1926. What declaration do you mean?
The stamp certificate upon which the churchwardens are to be admitted. We do not see who is to be the person who is to procure those documents for the vestry meeting. The warden going to be elected is of course not in a position to write to the registrar and say that he wants one; and the 5 *s.* for the stamp must be paid before the vestry meeting takes place, else the registrar has no assurance that he will receive the money for the certificate he issues.

1927. Lord *Winmarleigh.*] Do you not think that the registrar must be out of pocket, or that somebody must be out of pocket for some time?
Yes, I confess I should very much have preferred our going on as we have gone on with the present form of certificate, and that the stamped declaration should be signed in the presence of the churchwardens at the visitation; that seems to me the best course.

1928. Earl *Nelson.*] Do you say signed in the presence of the churchwardens?
Yes; I mean the stamped declaration.

1929. By whom?
By the new churchwardens.

1930. In the presence of the old churchwardens?
Yes, as they now sign. When they come to be admitted by me, the old warden comes and brings his presentment for the last year, and at the same time introduces his successor, and his successor signs the form of declaration in the book. I should like to see this course followed, but that instead of signing in this book which the registrar produces, we should produce a stamped declaration and let them sign that in our presence, not in the presence of the vestry, because I think there is no guarantee that the vestry will do rightly about it.

1931. Under this clause, your archdeaconry would lose a great deal of money, I suppose?
I suppose it would; but I confess I do not like to speak about my chancellor's position; I know very little about it.

1932. You say that at present you have a large proportion of the churchwardens' fees paid, and they pay a larger fee than is proposed in the Bill; if that larger fee was knocked down to 5 *s.* you would get a great deal less from churchwardens' fees, because it is proposed that the fees should be 5 *s.* for two churchwardens?
Yes, clearly we should. However that is not a point I have gone into.

The Witness is directed to withdraw.

MR. ROBERT GEORGE RAPER is called in; and Examined, as follows:

Mr. *Raper.*

1933. *Chairman.*] You are Secretary to the Bishop of Chichester?
I am.

1934. And Deputy Registrar of Chichester?
Of the Archdeaconry of Chichester.

1935. Not of the diocese?
Of half the diocese; the diocese consists of two archdeaconries; the Archdeaconry of Chichester, and the Archdeaconry of Lewes.

1936. And

1936. And the diocesan registry is divided?
Yes.

1937. Is that an old system?
It has always been so.

1938. Can you account for that variety in that diocese, as compared with others?
No, I cannot.

1939. Is there also a registrar of the archdeaconry?
I am the registrar of the whole.

1940. Then you are registrar of one-half of the Diocese of Chichester, and you act both for the bishop and the archdeacon there?
I am acting registrar of half the diocese, namely, the Archdeaconry of Chichester. Mr. Durnford, a son of the bishop, is the registrar. With regard to the Archdeaconry of Chichester, I am the archdeacon's registrar.

1941. So that you are deputy registrar to the bishop for one half of his diocese, and registrar in chief of the archdeaconry?
That is so.

1942. You have no concern with that portion of the diocese which has its centre at Lewes?
None whatever.

1943. Except as secretary to the bishop?
Yes, my duties in that respect extend over the whole diocese.

1944. The two offices which you hold are at present held during pleasure; I mean the office of secretary and the office of deputy registrar?
The office of secretary I hold at the pleasure of the bishop.

1945. And the office of deputy registrar?
That I hold at the pleasure of Mr. Durnford.

1946. The office of registrar of the archdeacon is a patent office?
Yes.

1947. Does it appear to you that there is any difference in the possibility of fulfilling well the two duties, comparing the office which you hold at Mr. Durnford's pleasure and that which you hold by patent?
What difficulties does your Grace refer to?

1948. Do you find it more difficult to act in the office in which you are dependent upon the will of Mr. Durnford than in that in which you have a patent?
I do not find any difficulty in that respect. Of course I act with more certainty where I know that my post is a permanent one.

1949. Who was Mr. Durnford's predecessor?
Lord Romilly.

1950. On his death who succeeded him in the office?
The bishop appointed Mr. Durnford.

1951. Had you been deputy to Lord Romilly?
Yes. The office has been in my firm for 70 years. The post of secretary and also that of deputy registrar has been held by successive members of my firm for 70 years.

1952. *Lord Steward.*] May I ask Mr. Durnford's age?
He is a barrister of some five or six years' standing.

1953. Lord *Strafford.*] Is he the private secretary at present to the Duke of Richmond?
Yes.

1954. *Chairman.*] So that it does not appear to you that it is impossible to unite the offices of secretary and registrar?
It is not impossible if the union is not made compulsory.

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1955. You do not think it would be well to make it compulsory?
I venture to say that there are very grave objections to making it compulsory.

1956. Will you state what objections occur to your mind?
Chiefly this; it would affect the bishops more than any one else; I think the bishop should not have forced upon him a secretary who may, for reasons which would perhaps be best known to himself, be distasteful to him.

1957. But that would be met by a provision in this Bill, would it not?
I think not, because the office of secretary is in effect abolished.

1958. It is swallowed up in that of registrar?
Clause 16 says that the secretary and the registrar shall in future be one office.

1959. And be held at the pleasure of the bishop?
Yes, and be held at the pleasure of the bishop.

1960. Would not that obviate the objection you have raised?
No.

1961. Would not the holder of that united office hold it at the will of the bishop?
Yes.

1962. Lord *Hatherley.*] Perhaps your objection is to the registrarship being held at the will of the bishop?
Yes, it appears to me to be objectionable.

1963. *Chairman.*] You do not think it right that the office of registrar should be held at the will of the bishop?
I think it ought not to be so held. I have prepared some observations upon that point in my paper.

1964. Perhaps you will read that part of your statement?
"It is proposed by Section 15 of the Bill that the offices of registrar and secretary shall be performed by one and the same person. The word 'shall' is used, but I would submit that an inconvenience of which they are not aware would thus result to the bishops. Instance, among others, the fact that they would thus have forced upon them the services of an official who may be distasteful to the bishop, or to whom he may otherwise have an objection."

1965. How would that be the case if he appoints him during his pleasure?
I hope that will never take place.

1966. You were proceeding on that supposition?
Yes. "The post of registrar is that of a public officer, a keeper of records, a recorder of acts, and adviser on public legal matters; and it is contemplated by this Act to make him still more publicly useful."

1967. *Lord Steward.*] You said "by this Act." I presume you meant by this Bill?
Yes, by the Bill; "but the relations between the bishop and his legal secretary are of the most delicate nature, requiring the personal attention of the latter at various hours and seasons, involving private matters affecting the bishop and his clergy, oftentimes, too, the well-being of a parish, and demanding special tact and discretion. From a lengthened acquaintance with the nature and peculiar duties and functions attaching to this office, I venture to assert that its abolition, or the blending of it with any other office compulsorily, would be an evil to the bishop, and an irreparable loss to the parochial clergy and the laity."

1968. *Chairman.*] That is an objection to a provision which is not in this Bill; is not that so?
It is in the Bill in effect, because if you make it compulsory that the registrar shall be the secretary, then the bishop will either be compelled to employ that gentleman as his secretary, or he must dispense with his services in that capacity also. He need not avail himself of his services, but, if he does not, you deprive the bishop of a legal adviser, which he should have.

1969. Is

1969. Is it not the case that this Bill proposes that the registrarship, which is a legal office, shall be held at the will of the bishop?
It does.

1970. Does that obviate the only objection you make?
Your Grace means that he could dispense with the registrar at once if he did not like him as his secretary; that is a remedy which would be open to so many grave objections that I can hardly discuss that question.

1971. I think you said that you held one office during pleasure?
Yes, that of secretary.

1972. And also that of deputy registrar?
That is an officer under seal.

1973. But you hold it at the pleasure of the registrar, do you not?
Yes; it is an office held at Mr. Durnford's pleasure.

1974. But you, and other members of your firm, have held it for 70 years?
Yes.

1975. No evil has happened during those 70 years, has there?
No; because the acting registrar has been, in all but name, the real registrar.

1976. Still Lord Romilly could at any moment have dispensed with your services.
He gave the appointment upon the condition that he was never troubled about the business.

1977. In fact, he merely nominally held the office for the benefit of some one else, I suppose?
He never interfered in any way at all; he was never known to take any part in the matter.

1978. *Lord Steward.*] Do you not think that a non-resident registrar would be very sensitive to public opinion if, on light grounds, he dismissed his deputy?
I am sure of it.

1979. Therefore you have a practical security in acting as deputy to a non-resident registrar, although you hold office at his pleasure, which you would not have if you held office merely at the pleasure of the bishop?
Yes.

1980. *Chairman.*] You think it is not within possibility that the present registrar might think it desirable to live at Chichester, and do his own duties?
There are reasons why he could not; he is not a notary, to begin with.

1981. Perhaps he is not legally appointed?
The bishop appointed him, but because he is not a notary he could not perform many of the duties which the registrar is called upon to perform.

1982. I suppose he might become a notary?
Only with the consent of the other notaries practising in the district.

1983. *Lord Steward.*] If he were a notary, could he be also a barrister?
I cannot answer that question; my impression is that he could not.

1984. *Chairman.*] With regard to the collection by stamps, you see some difficulty in that?
Yes; but, with your Grace's permission, I wish to continue upon the subject of the registrar and the deputy registrar. I approach that subject with considerable delicacy. "My remarks must not be taken as entirely selfish; but in the name of the whole body of deputy registrars, I would respectfully point out that the deputy registrars are wholly ignored in the proposed Bill; that the effect of the Bill, in its present form, would be to work a grave injustice to those who in many instances, for a long period, have been the registrars in all but name, and to a staff of valuable men who for years have been employed by them, and whose knowledge and experience cannot be too much appreciated."

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1985. In fact, you think, not unnaturally, that the Bill ought to secure compensation to the deputy registrars as well as to the registrars; is that your view? Messrs. Moore and Currie, for example, have been deputy registrars of the Faculty Court for a very long time, the registrar having been otherwise employed in Her Majesty's service elsewhere; and the same thing applies to Oxford and various other dioceses, and you think that if anybody is to be attended to in the way of compensation, the man who has been doing the duty is a man who ought to be attended to?

Yes. The effect of the Bill would be this: if you make the appointment of the registrar at the pleasure of the bishop instead of during good behaviour, you render a man liable to be suddenly ousted from the place, although he may have an office specially fitted up for the reception of records, tithe-maps, muniments, and other public documents, and a staff of clerks specially trained to the work, and who are most useful to the diocese, to the clergy, and to the bishop; and what applies to him if he as registrar is discharged at pleasure applies in a double degree, I may say with tenfold force, to the deputy registrar who now does the whole of that work. In my own case I do the whole of it; I find the office, the staff of clerks, the muniment room, the tithe-maps, and every convenience for the public. If you make the registrar liable to be dismissed at pleasure, the moment he goes I go with him, without compensation and without any chance of a pension.

1986. Do you think it a desirable thing that all those should be provided by individuals rather than out of some public source. You heard what the Archdeacon of Chester said as to the register of Chester, that it is a portion of the cathedral buildings?

Yes.

1987. Is not that a better arrangement than that it should be the private office of a solicitor in the town?

I think there should be, belonging to every diocese, a public office in which all the public documents and muniments should be kept by a public officer.

1988. That would do away in part with the difficulty you have mentioned, would it not?

It would. But in what way would the registrars who have done their duties for years past be compensated?

1989. You think they are entitled to compensation for all the expense they have been put to?

I think their office should be made, as it is now, if not a patent office, an office held during good behaviour, and that the deputy registrar should have the right of succeeding to the post of principal registrar, if he is acting as deputy registrar at the time of the passing of the Act.

1990. You do not think that the present system is a good one, by which the deputy registrars have no claim to succeed to the principal registrarship?

They simply go on without remonstrance, in consequence of what your Grace referred to just now; in my own office I have not the least fear of being disturbed; it would not be likely.

1991. Did not that fear arise upon the death of Lord Romilly; was it not natural enough that the bishop should have appointed a man to do the duty when Lord Romilly died?

When death occurred that was another thing altogether. I stood my chance with other men; that is not like being dismissed at caprice.

1992. Lord *Hatherley.*] You use the term "caprice;" do you think that there is any objection to the registrar in future being removable by an order of the bishop?

When I used the word "caprice," I meant change of opinion. What your Lordship suggests comes, in effect, to holding during good behaviour.

1993. Yes; but it is not so troublesome a process to remove the holder of the office; you are aware, perhaps, that a person holding during good behaviour can only be removed by a legal process?

Would you give him an appeal?

1994. That

1994. That is a matter for subsequent discussion. I ask whether you do not consider that it would be sufficient that the cause of removal should be stated in the order of removal?

I do not think you would get the same good class of men to act as registrars if they were liable to be ousted at pleasure.

1995. I do not speak of their being ousted at pleasure; I speak of their being ousted for cause, and that cause to be stated; do you remember the official assignees in bankruptcy?

Yes.

1996. That was the mode in which they were removable?

Yes.

1997. *Chairman.*] Then, do you think that that would be sufficient for the bishop's protection if the same person was registrar and secretary, and was removable from both offices on cause assigned?

I think you are depriving the bishop of an officer who is now always at his call. His secretary is at his call. If you make the registrar the secretary also the registrar is a public official; he has his hours of business; there is a certain time at which his office opens and closes, and within which he may be seen upon all matters; but if you add to that that he is liable to be sent for, or called upon by the bishop, as he can be now at any hour, I think you would find that the registrars would complain.

1998. Still no practical inconvenience has arisen in your own case during all the long time while you have united these offices?

I think the public have benefited by the arrangement.

1999. Still, as a matter of principle, you object to a compulsory union of the offices, although they may be united with advantage by arrangement?

I quite agree that they may be united by arrangement, but I think it should be at the option of the bishop.

2000. Will you tell us something as to your feeling about this fee fund; do you think it a good thing to have a general fee fund out of which salaries are to be paid?

I have not given consideration to that.

2001. What is your opinion with regard to the collection by stamps?

I venture to hope that that provision will be withdrawn from the Bill.

2002. Will you kindly read what you have written in your Paper upon that point?

"Referring to Section 23 and the following sections, I disapprove altogether of the proposal to pay by stamps and to make us sellers of stamps. I venture to express a hope that this provision will be withdrawn. Such a procedure may work to advantage in the case of the Probate Court, where the business is transacted through a totally different class of persons; but even in that court the solicitors and their clerks procure the stamps, not through the registrar but through the Inland Revenue Office. With the clergy, however, the case is different; their business is conducted personally, or by correspondence, and the payment by them in stamps owing to their residence in distant localities, far from any distributor, would be inapplicable and inconvenient." If you put upon a clergyman who is living in a distant parish, the requirement that when he wants to make any payment to a registrar he must make it by a stamp, that the registrar cannot receive it in any other form than by stamps, I hardly know how it is to be carried out without causing considerable inconvenience.

2003. What sort of payments do the clergy make now to the registrar?

I think I may say that they make no payments whatever except those that come strictly within the limit of fees for duties performed for them.

2004. Will you give an example?

Faculties, for example.

2005. Is it not the case that every faculty has a stamp at present?

No, not a faculty.

2006. A Government stamp?

I think not.

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2007. It has been contended in favour of payment by stamps that almost all the documents which pass between the registrar and the clergy at the present moment have a stamp upon them, and that therefore we should be merely extending a system which would not be found to be more inconvenient in its extended form than the present system is; what have you to say to that?

My own experience of documents passing between the clergy and the registrar is that they are few in number. A faculty, for instance, is applied for formally from the vestry, it then passes through the usual routine of the court in which it is granted.

2008. I do not see what the inconvenience to the clergy would be if there is nothing passing?

If a faculty issues, for instance, the total cost with me is five guineas; but if the Bill were passed that five guineas could not be paid, as it is now, by a cheque, or by a post-office order from the clergyman, but he must procure from me five guineas' worth of stamps.

2009. Is not it the case at the present moment that the faculty has a stamp upon it, and that we are merely extending to the whole payment that which already applies to half of it?

I think not. I think a faculty does not bear a stamp.

2010. I am informed that there is a stamp of 10 *s.* upon a faculty?

That is a deed stamp, which can be procured by the registrar himself; it is upon the parchment upon which he writes the faculty.

2011. That is what is proposed with regard to the other stamp, that the registrar should procure the stamp and put it upon the parchment upon which the faculty is written?

The only difference is, that the whole five guineas is to be in stamps instead of only 10 *s.*

2012. Then you would put upon the registrar the obligation of procuring the stamp?

That would be the effect.

2012*. There is a difficulty in that respect, no doubt, that he must produce the money for the stamp, and be out of pocket for some time; is that the difficulty which you apprehend?

Partly; and also that you are imposing upon the registrar a duty which has hitherto been performed by the Inland Revenue Department.

2013. *Lord Steward.*] The registrar would have the custody of the stamps?

Yes.

2014. To an indefinite amount?

Yes; in the case of the district registrars of probate, every payment is by stamps, but the applicant brings his stamps with him; he fetches them from the Inland Revenue Office, and brings them to me, and I affix those stamps at once to the document, which relates to the business.

2015. *Chairman.*] The man himself brings the stamps to the office, and you affix them?

Yes.

2016. So that you have not to advance any money?

No.

2017. *Lord Steward.*] You have not the responsibility of being the custodian of the stamps in that case?

No; I simply make a return to the court of the particular business transacted and the fees thereon.

2018. Every person who has the custody of stamps has to give security, has he not?

Yes.

2019. And in the event of those stamps being stolen, he would have to make them good?

Yes.

2020. You

2020. You object to being entrusted with stamps, as you would be under the Bill?
We object to being made sellers of stamps.

2021. *Chairman.*] And you consider that there would be a difficulty in following out the same plan on the part of the clergy, which is at present used in connection with the Probate Court?
For ourselves I would say, that it would be imposing upon us that which can hardly be intended, that we should keep a store of stamps, and be made stamp sellers. For the clergy I would say, that if the payment is to be made in stamps, and the same system is adopted in getting the stamps from the Inland Revenue officers, you are putting them to an inconvenience which, in proportion to the extent of the business done, would be very great.

2022. What is the inconvenience; that they would have to bring ready money?
No, that they would have to purchase the stamp and bring it to the registrar.

2023. Where does a man get his stamp now if he wants to make his will?
A will does not bear a stamp.

2024. Whatever the documents are that do bear stamps?
A marriage license, for instance.

2025. Where does the stamp come from in that case?
The surrogate is supplied with affidavits, which bear a 2*s.* 6*d.* stamp, from the registrar who sends him forms; I get them from the Inland Revenue Office.

2026. Is not that the same sort of thing?
I think not; it is not at all that which is contemplated by the Bill.

2027. You think then that the same plan which is used for getting stamps for marriage licenses would not apply to the documents in question in this Bill?
No; in the case of marriage licenses the surrogate would write to the registrar for affidavits preparatory to a license; such affidavits would be sent by the registrar, but he would get them from the Inland Revenue.

2028. Why should you not do that with regard to the other documents?
He would not know what was required. You are proposing to make the clergy and others pay indefinite unknown sums; they cannot tell what business they may have to perform, and they must not pay the registrar as they do now, in money, but they must bring stamps to him.

2029. And you think that that difficulty does not exist with respect to marriage licenses at present?
It does not; there the registrar keeps the license.

2030. Who distributes the stamps for marriage licenses?
The registrar gets them from the Inland Revenue Office.

2031. And you do not think you could do that with another document?
No; an affidavit sworn before a surrogate comes to the registrar, who is asked for a marriage license; the registrar sends a clerk to the distributor of stamps for a form; that form is filled up and sealed with the chancellor's seal. That is the way in which it is practically done.

2032. *Lord Steward.*] Is not the difference, or a portion of the difference, this, that whereas the stamp duty on marriage licenses is well known and is of small amount, the fees payable under this Bill are of unknown amount, and will vary from case to case?
Yes; all known stamps would be affixed to the document itself, and would be procured by the registrar in the way in which a solicitor would obtain his stamped document for a conveyance or a mortgage; but if it is a question of making payments of fees, fees are different.

2033. *Chairman.*] I confess I do not see the difference?
The fees are in the nature of a bill due to the registrar, and should be paid in money. The stamps on the various documents are regulated by law, and the document itself, with the proper stamp affixed, is procured from the Inland Revenue, not by the applicant, but by the registrar.

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2034. That is to say, it is a fixed fee, settled by rules and orders?
Yes, some portion of it would be fixed.

2035. It would all be fixed under this Bill?
Yes. In the case of a faculty there would be fees to be added to that in the shape of mileage or expenses of the clerks. There is a fixed fee, as things are now, for the chancellor and the registrar and others, but there is a mileage to be paid according to the distance of the church to which the registrar's clerk has to go to affix the notice for the purpose of verifying it afterwards. Of course that would have to be considered, and he would have to be paid upon a set scale of mileage.

2036. You remember the Act that was passed a short time ago, with regard to the fee for the consecration of additional churchyards?
Yes.

2037. The fee fixed there was, I think, 5*s.*, was it not, for the consecration of an additional churchyard?
I think so.

2038. Can you tell me, as a matter of fact, how that has been found to work; is the 5*s.* fee collected?
To whom is the 5*s.* fee payable to which your Grace alludes?

2039. The 5*s.* fee is payable to the registrar, I think, for the consecration of an additional portion of a churchyard, under an Act of Parliament?
Yes; I have always had it paid without difficulty.

2040. Lord *Winmarleigh.*] Is not that simply for enrolment?
Yes.

2041. *Chairman.*] Are you aware whether any other fee is charged besides that 5*s.*?
I am not sure whether your Grace speaks of a churchyard adjoining an old churchyard, or of a new one altogether. In the case of one attached to an old churchyard, the registrar is almost excluded by the Act.

2042. Does he not receive a fee of 5*s.*?
Yes, for the enrolment of the conveyance deed.

2043. That is the fee paid to him?
Yes.

2044. As a matter of fact, is no other fee charged?
No.

2045. Not for inspecting the deed?
No.

2046. Do you happen to know whether that is the case in all dioceses?
No, I do not.

2047. How does the bishop satisfy himself as to the legality of the conveyance in a case of that kind?
It is laid before me, as his secretary.

2048. Do you, without any fee, give a legal opinion upon the subject?
I do so.

2049. You do not know whether that is the custom in most dioceses?
I do not.

2050. You spoke of clerks affixing notices, and the mileage being charged; that would be a fee as from attorney to client, I suppose; it would not be a legal fee?
It would be included in the charge sent in to the incumbent.

2051. That is to say, you, as a solicitor, would send him in a bill for it?
I, as the registrar, send it in. If a faculty is required now by an incumbent, the first business of the incumbent is to communicate with me. I then generally tell him that the proper way is to have a resolution of his vestry; after that is done I prepare the petition for the faculty, and the sentence; it goes to the chancellor, who returns it; a notice is then affixed by one of my clerks on the church

church door; I afterwards attend the surrogate of the chancellor, when the faculty is what is called cried, and the clerk attends there to verify that the notice has been duly affixed; and for the journey of the clerks to the church of the parish, to see that the notice is properly affixed, a mileage is paid.

2052. Who regulates this mileage?
It is paid according to the chaise-hire which the clerk has.

2053. That is to say, you charge, as a solicitor, certain expenses?
The expenses of the clerk going to the church are charged.

2054. It is a bill sent in, in fact, by you as a solicitor?
I send in a bill for the ordinary fees allowed by the Order in Council for the faculty, and, added to that, certain expenses of the journey of the clerk.

2055. But those are not fees at all?
All but the mileage are fees.

2056. Of course they are all settled, and would be regulated by this Bill; but the mileage is a private charge, which is not authorised by Act of Parliament, but merely made for work done?
It is for work done.

2057. Would that be affected by this Bill?
I apprehend the registrar would be bound to do that as part of his duties.

2058. That would be an advantage to the clergy, would it not?
It would be a great advantage to the clergy that the expenses of faculties should be reduced considerably, and that there should be a recognised sum charged throughout every diocese.

2059. And that is what is proposed in this Bill, is it not?
To some extent, not entirely, I think.

2060. As far as it goes, you think that that is an advantage?
I would recommend, as regards faculties, that the clergy should be bound to procure a faculty for all work done to the fabric of a church, and that for every one of those faculties, if unopposed, a fee not exceeding 2*l.* 2*s.* should be charged.

2061. And that that should include everything; the mileage of the clerk and everything else?
No, I think not; I think the mileage should be extra. I was about to add that that should include every kind of fee except the mileage, which should be according to a set scale, in the same way as witnesses would be paid for attending a court; they have so much per mile allowed to them.

2062. Lord *Winmarleigh.*] With regard to requiring a faculty, would you apply it to every alteration that is made in a church?
I would assimilate these faculties to the faculties under the Public Worship Regulation Act; there the cost of the faculty is not to exceed 2 *l.* 2 *s.*

2063. I mean you would not allow any discretion to the minister and churchwardens with regard to anything connected with the fabric of a church?
No; I would have a faculty for everything that has to be done touching the fabric of a church.

2064. *Chairman.*] Is there any other point that you would like to call our attention to. Perhaps you would like to put some portion of the document that you have prepared in evidence?
If I might do so, I should like to put in the whole of it. I prepared it for the purpose of my examination before your Lordships, and I have appended to it a history of each of the offices held by me, and the duties and emoluments attaching to each.

2065. Will you, then, put it in?

[*The same is delivered in, and is as follows:—*]

I hold the following appointments:—

Secretary to the Bishop, extending over the whole diocese; Deputy or Acting Registrar of the Archdeaconry of Chichester.

*N.B.*—The diocese of Chichester comprises the whole of East and West Sussex.

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Sussex. East Sussex constitutes the Archdeaconry of Lewes; West Sussex that of Chichester. Mr. Currey, of Lewes, is the Registrar of the Lewes Archdeaconry. Mr. Durnford, a son of the present Bishop of Chichester, is the Registrar of the Archdeaconry of Chichester.

Official and Registrar of the Archdeacon of Chichester.

Registrar of the Peculiar of the Dean of Chichester.

Deputy Registrar of the Peculiar of the Archbishop, which comprises a few parishes in the Archdeaconry.

It may be of use if I inform your Lordships of the nature, duties, and emoluments of each office, and the effect which the proposed Bill will have upon them. Such information may illustrate the observations, which I would respectfully offer, upon certain clauses in the Bill.

### The Chancellor, Vicar General, and Official Principal.

*N.B.*—These offices are held by R. W. Wintle, Esq.

These offices are now held by the same person. In this diocesan court only three cases, which come under the head of contentious business, have occurred during the last 25 years. One was a case under the Church Discipline Act, of an exceptional character; the next was a case of dispute as to a pew; the other, which occurred quite 10 years ago, was a case of immorality, arising out of a presentment at a visitation, but which did not come to a formal hearing.

In this diocese the court has become, so far as contentious business is concerned, almost obsolete, and my opinion is, that if a case were to occur, the parties would prefer to transfer it to the supreme court direct. I suggest, that on a vacancy the provincial judge should be the official principal of the diocesan court, and before whom all contentious business shall be heard. The diocesan court should be preserved for the non-contentious business, and for which it is eminently useful. As the head of the court, the bishops should be empowered to appoint a chancellor or vicar-general, who should be a barrister of a certain standing, and who, with the registrar, should transact the non-contentious business of the diocese.

By custom, the chancellor's office in the Archdeaconry of Chichester is worth, in the gross, 20 *l.* per annum, subject to a charge of 10 *l.* per annum for land tax. This must be understood as being by arrangement, as the fees, which are legally due to him on institutions, are taken by the acting or deputy registrar, who performs all the duties connected therewith. The chancellor performs and receives fees for the following duties, namely:—As to consecrations, perusing and settling draft petition and sentence; as to faculties, perusing petition for and settling draft of the faculty, attending court either personally or by surrogate when the faculty is proclaimed. On two classes of business, viz., marriage licenses and sequestrations, no duties are performed by him; the different instruments issue in his name and under his seal, and he receives on each license and sequestration a fee of 6 *s.* 8 *d.*, but the actual and responsible work is performed by the registrar. I keep the chancellor's seal; I see it affixed to each marriage license, and I sign such license as acting registrar of the court, and the surrogate, before whom the oath is taken, countersigns it in that capacity.

### The Registrar.

By custom, the registrar's office in the Archdeaconry of Chichester is worth about 15 *l.* per annum (subject to a charge of 4 *l.* for land tax), and it has always been a sinecure. The duties and expenses have been always performed and paid by the deputy or acting registrar.

### The Deputy or Acting Registrar.

As deputy or acting registrar for the Archdeaconry of Chichester, I perform the following duties:

*Consecrations.*—Before a consecration, a large amount of correspondence arises with the parties, attendances on them and the bishop. Then follow the drawing and engrossing petitions for sentence, and the sentence itself, and making a plan of the ground to be consecrated; attending at consecration; attesting, as notary public, the bishop's act; registering *in extenso* the deeds and sentence. The number of consecrations average about two a year, and the following fees are taken:—

Scale of Fees under Order in Council, March 1869.

| | | £. | *s.* | *d.* |
|---|---|---|---|---|
| Consecration of Church and Burial Ground | Chancellor | 3 | 3 | – |
| | Registrar | 7 | 7 | – |
| | Secretary | 1 | 1 | – |
| | Apparitor | 1 | 1 | – |
| | £. | 12 | 12 | – |

Consecration of burial ground alone, one guinea less to chancellor and registrar.

*Faculties.*

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*Faculties.*—Attendances on, and correspondence with parties applying for a faculty; instructing them as to the proper mode of procedure; perusing minutes of vestry; drawing act of court on issue of citation; drawing and engrossing citation, and instructing apparitor to publish same and verify publication. Attending the surrogate in the Consistory Court when faculty is decreed; drawing act of court (on return of citation, with certificate of service endorsed); drawing and engrossing bond and faculty, and forwarding same to chancellor for approval; to this should be added the journies of responsible clerk, to affix citation to church door, and verify same. The number of faculties averages about three per annum, and the following fees are taken:

Scale of Fees under Order in Council, March 1869.

| | £. | *s.* | *d.* |
|---|---|---|---|
| Faculties.—Chancellor - - - - - | 1 | 1 | – |
| „ Registrar - - - - - | 3 | 13 | 6 |
| „ Apparitor - - - - - | – | 10 | 6 |
| £. | 5 | 5 | – |

and travelling expenses.

The registrar is paid in addition for all proctorial work if performed by him.

*Marriage Licenses.*—As deputy or acting registrar, I perform all the duties in connection with marriage licenses, excepting only the administration of the oath to the parties applying, which is performed by the surrogate, who receives 1 *s.* My duties comprise the attendance on parties applying at the registry direct, receiving instructions for and preparing the affidavit. In the case of application through a surrogate I have to peruse the affidavit forwarded and frequently to correspond with the surrogate. In both instances I have to prepare the license, which is either required on application or to be sent off by next post, so that only a resident registrar could do what the public require. I afterwards file the affidavit and register the issue of the license. I provide the forms. The number of licenses issued by me per annum is about 45, and the following fees are taken for a license:—

Cost of a marriage license, 2 *l.* 2 *s.*:

| | £. | *s.* | *d.* |
|---|---|---|---|
| Chancellor - - - - - - - | – | 6 | 8 |
| Registrar - - - - - - - | – | 7 | 3 |
| Deputy Registrar - - - - - - | – | 13 | 7 |
| Stamps, &c. - - - - - - - | – | 14 | 6 |
| £. | 2 | 2 | – |

*Sequestrations.*—As acting registrar I perform all the duties in connection with this class of business. They comprise correspondence with and instructing the churchwardens and preparing the instrument. The sequestrations in this archdeaconry are now simply those of creditors. Upon receipt of the writ at the office I have to see the bishop, send responsible clerk to affix the order of sequestration to the church door, and afterwards arrange for the appointment of sequestrator. It has not been necessary to issue any churchwarden's sequestration on vacancy. The sequestrations average about three a year, and my fee on the occasion is 11 *s.* on a churchwarden's, and 3 *l.* 3 *s.* on a creditor's sequestration.

*Visitations.*—The duties of the acting registrar in this respect are important and numerous. When the bishop has fixed the days and places of his visitation, the first duty is to complete the articles of inquiry and receive them from the bishop; to send duplicates to the clergy and to the churchwardens: to receive one return from each, before the visitation, for the bishop's use, and to make all arrangements for the business. Up to the day of visitation the correspondence with the clergy and churchwardens is heavy. The acting registrar, with a responsible clerk, attends the bishop on his visitation day, calls the names of the clergy, afterwards attends the surrogate and sees the churchwardens called and sworn. To transact all this in a way to make matters go smoothly requires thorough acquaintance with the business, the people, and the locality, and it is obvious that inconvenience would arise if the official could be changed at pleasure. Incidental to the visitation, the following business has to be done by the acting registrar. Drawing and issuing citations to clergy and churchwardens; preparing visitation books; circulating articles of inquiry among churchwardens and clergy; examining presentments of clergy and churchwardens; filling up declarations of new churchwardens. There are 165 parishes in the Archdeaconry of Chichester, and legally the full fee payable by each is 18 *s.*, but it has always been considered impossible to collect this sum, and the old customary fee of 5 *s.* 6 *d.* has been taken from all those parishes, the churchwardens of which have qualified. The fees collected have lately amounted to about 20 *l.*, but they decrease on each occasion. The fee of 5 *s.* 6 *d.* includes the chancellor and the apparitor's fees of 1 *s.* each. The visitation is triennial. The number of churchwardens who come to qualify decreases yearly, and there is a fixed dislike to the payment of the fee, however

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small, because there is no fund out of which it can be paid. At the same time they value the visitation for its own sake.

*Ordinations.*—The only duty performed by the acting registrar, in connection with ordinations, is the registration of the names and times of ordination of the candidates in the bishop's Act Book. By the Order in Council of March 1869, the registrar is entitled to a fee of 5 *s.*, but, in order not to increase the total sum charged to candidates before that time, he receives only 3 *s.* The total fee paid by candidates is 2 *l.* 5 *s.*, namely, 2 *l.* 2 *s.* to the bishop's secretary, and 3 *s.* to the registrar. The average number ordained yearly, during the last 10 years, is 29; priests and deacons being about equal.

*Institutions, &c.*—The acting registrar, upon being instructed by the bishop, prepares the instrument of institution, certificates, declarations, and oaths, corresponds with the future incumbent, attends the bishop at the ceremony, which in this diocese is always done in the church of the parish to which the clerk is instituted, and enters the institution in the Act Book. The institutions and collations average about seventeen per annum. The fee on each institution is 2 *l.* 2 *s.* 4 *d.*, and on a collation 2 *l.* 15 *s.* 8 *d.*, in accordance with the Order in Council of 22nd July 1857.

*Official Extracts.*—The usual charge for an extract is according to the amount of trouble and labour involved. The fees received average about 5 *l.* per annum.

*Convocation.*—The acting registrar performs all the duties in connection with the election of a proctor. They comprise the preparation of all citations, and issuing same; the drawing the Act of Election, and preparing the poll-book; attendance in court on the election, and taking poll; and making all necessary returns to the Bishop of London. The number of documents prepared is large, and much labour and expense involved. No emolument whatever can be legally enforced for the performance of these duties.

*Muniments.*—The acting registrar has to keep in order, and fitted up at his own expense, a strong room for the reception of the diocesan records. The duties connected with the registration of the records comprise, arranging the different documents, numbering and indexing them. A small fee is charged on the deposit of some class of instruments, but the amount received is very small.

*Tithe Maps.*—The acting registrar has to provide and keep in order a room for the reception of the tithe maps for the archdeaconry; to keep, and index, and number the maps, and to attend on parties inspecting them. The fees received, in respect of searches and extracts, amount to about 10 *l.* per annum.

### Generally.

The acting registrar has to bear all expenses of office, clerks' salaries, light, fuel, &c., travelling expenses, printing, stationery, and postages; and to maintain the post with proper and efficient staff and plant.

### Apparitor.

The apparitor serves all citations, and attends on all occasions when usual; his fees amount to about 12 *l.* 12 *s.* a year.

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I have thus far kept the duties of registrar or acting registrar distinct from those of secretary. I have regarded the registrar as the public official, the legal adviser in public matters, as the chief officer of the diocesan court under the chancellor; and, taking this as a fair specimen of the office, it will be obvious that the non-contentious public business of a diocese is, in effect, performed by the registrar; and the suggestion arises that he may well be entrusted with a larger amount of business, to the relief of the provincial judge and chancellor, as is the case with the registrars of the probate division of the law courts. I now pass to the office of legal secretary to the bishop, the importance of which is, I would respectfully submit, entirely overlooked in the proposed Bill.

### Secretary.

The secretary's duties have reference to the whole diocese, and comprise the following:—

*Ordinations.*—The secretary has to correspond with candidates on all points relating to titles, testimonials, &c.; to examine and arrange the testimonials, &c.; to attend the candidates on their making the necessary oaths and declarations; to prepare the letters of orders, and other papers; and to attend at the ceremony of ordination. His fee is 2 *l.* 2 *s.* in each case.

*Institutions, &c.*—The secretary has to correspond with the patron, to examine the deed of presentation, letters of orders and testimonials, to make appointment with the bishop and presentee, and to attend at the institution; to make returns to the Barons of the Exchequer of the institutions, &c. His fee is 4 *l.* 4 *s.* in each case; on a license to a perpetual curacy his fee is 2 *l.* 2 *s.*

*Licenses.*

*Licenses*.—The secretary carries out almost the same duties in reference to licenses as in reference to institutions, &c. His fee is 13 *s*., including a fee of 3 *s*. for copy of license for the churchwardens.

Taking an average of ten years, rather more than forty curates are licensed yearly.

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It is obvious that, in these respects, the bishop should have an official of his own selection in whom he can confide, and who can discreetly make inquiries relative to any candidate or clerk, and deal with, and advise, the bishop on the various points arising on an institution or a licensing; and it may be noticed here that if this office is abolished, not only will the bishop be deprived of an officer and adviser on all these points, always accessible, but the candidates and clergy will be without the legal authority to whom they can apply, as they now do, for information on all points relating to particular business on hand, and which information is cheerfully and gratuitously afforded by the secretaries.

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*Consecrations*.—The secretary conducts the preliminary correspondence and inspection of plans (if any), and makes the appointments in connection with the matter. His fee is 1 *l*. 1 *s*.

In the Chichester archdeaconry, the consecrations average about two per annum. These do not include consecrations under 30 & 31 Vict. c. 138.

*Resignations*.—The secretary conducts the correspondence as to the acceptance by the bishop, of resignations. When prepared by him, a fee of 1 *l*. 1 *s*. is charged. They average about five per annum.

*Incumbent's Resignation Act*.—There has been one in each year since the passing of the Act. Here, again, I instance the way in which the legal secretary is of use. He corresponds with and advises the incumbent seeking to avail himself of this Act, explains what is to be done to secure its operation, as to appointment of commissioners, meetings, and award, and he probably saves the incumbent professional advice from other quarters, and from trouble in other respects.

*Miscellaneous Duties*.—The secretary also peruses all draft conveyances to which the bishop is a party, obtains the bishop's seal and signature, prepares and conducts correspondence relative to licenses of legal and non-residence, licenses to perform Divine Service in other than consecrated buildings under the several Acts in connection therewith, prepares appointments of rural deans, and prepares and makes copies of bishop's orders, in connection with the Dilapidation Act.

The secretary provides at his own cost, office and clerks, printing and stationery, and other usual official plant; and is often called upon to prepare the voluminous returns which the bishop is required to make, entailing infinite labour, and demanding thorough acquaintance with the business.

### The Sealer.

The sealer's duties are very small. He attaches the bishop's seal to all documents requiring the same.

### Archdeacon's Official and Registrar.

The archdeacon's official performs the following duties:—

*Visitations*.—The official prepares and issues citations, and circulates the articles of enquiry among the churchwardens of the archdeaconry, prepares visitation books, attends at visitations, examines presentments of churchwardens, arranges the articles, and conducts much correspondence. There are 165 parishes in the archdeaconry; and legally, the fee payable by each is 18 *s*., but it has always been considered impossible to collect this sum, and the old customary fee of 4 *s*. 6 *d*. has been taken from all these parishes, the churchwardens of which have qualified. The fee of 4 *s*. 6 *d*. includes one of 1 *s*. due to the apparitor. The visitation is held twice in three years.

*Inductions*.—The official prepares the mandate for induction, attaches the archdeacon's seal thereto, and corresponds with incumbent. His fee therefor is 1 *l*. 3 *s*.

The office is patent.

### The Dean of Chichester's Peculiars.

*Registrar*.—The dean has only the privilege of granting marriage licenses for those parishes within his peculiar jurisdiction. The parishes are almost confined to the city. The license issues in the dean's name and under his seal. The average number issued is about six per annum, and the registrar's fee, in connection therewith, averages about 6 *l*. 6 *s*., which is the whole value of the office.

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THE ARCHBISHOP'S PECULIARS.

*Deputy Registrar.*—The duties of the deputy registrar are confined to granting licenses for marriage in the parishes which are subject to the peculiar jurisdiction of the archbishop. The licenses issue in the name of the commissary of the archbishop. The registrar receives on each license 13 *s.* 4 *d.*, and the deputy registrar, 14 *s.* 2 *d.* His fees average about 4 *l.* 5 *s.* per annum.

GENERAL OBSERVATIONS.

Regarding the registrars and acting or deputy registrars as a body, it may be confidently asserted that they gratuitously perform, in connection with these offices, important and numerous services to the clergy and to the public. Such services consist of a large amount of correspondence and advice, personally and by letter, on the various subjects affecting the clergy and laity, and parish arrangements, often saving the bishop much preliminary trouble and inquiry, avoiding difficulties in the parish which arise from ignorance of the requirements of the law, and, what is most to the purpose, thus providing the incumbent with an authorised legal adviser, whose gratuitous assistance he may confidently, and as a matter of right, seek in the occurrences which are continually cropping up in his parish, and thus saving him from the cost of other professional aid.

It is proposed by section 15 of the Bill, that the offices of registrar and secretary shall be performed by one and the same person. The word "shall" is used, but I would submit that an inconvenience, of which they are not aware, would thus result to the bishops; instance, among others, the fact that they would thus have forced upon them the services of an official who may be distasteful to the bishop, or to whom he may otherwise have an objection. The post of registrar is that of a public officer, a keeper of records, a recorder of acts, and adviser on public legal matters, and it is contemplated by this Act to make him still more publicly useful; but the relations between the bishop and his legal secretary are of the most delicate nature, requiring the personal attention of the latter at various hours and seasons, involving private matters affecting the bishop and his clergy, oftentimes, too, the well-being of a parish, and demanding special tact and discretion. From a lengthened acquaintance with the nature and peculiar duties and functions attaching to this office, I venture to assert that its abolition, or the blending it with any other office, compulsorily, would be an evil to the bishop, and an irreparable loss to the parochial clergy and the laity. What has been said about the assistance afforded by the registrars, may be referred to with equal force as regards the secretaries. The secretary is brought nearer to the bishop than any other official; his relations are closer and more personal. In him the bishop has a personal legal adviser, available in and out of business hours, advising him, independently of all other professional sympathy or prejudice, and with the single desire of keeping the bishop legally right. In him, too, the parochial clergy find a reliable friend; years of connection secure confidence; he is free from party feeling, and they come to him for advice, not alone on affairs relating to the church, the parish, and their official matters, but as the private friend, the mediator in many a difference, and the ready helper in the hour of need, in a more substantial manner. This testimony will be confirmed, if need be, by the parochial clergy and laity, and, it may be added, that these services are gratuitous.

I would therefore respectfully urge that the office of secretary should be left untouched, and that the bishops should be free to appoint whom they please, leaving it open to the registrars or acting registrars to hold both offices as at present.

I now approach the subject of registrar and deputy registrar, and I do so with the utmost delicacy. My remarks must not be taken as entirely selfish, but in the name of the whole body of deputy registrars I would respectfully point out that the deputy registrars are wholly ignored in the proposed Bill; that the effect of the Bill, in its present form, would be to work a grave injustice to those who, in many instances, for a long period have been the registrars in all but name, and to a staff of valuable men, who for years have been employed by them, and whose knowledge and experience, cannot be too much appreciated.

The deputy registrar has, in the first place, to qualify himself by becoming a notary public; this he can only do at a considerable expense, and with the consent only of the other notaries practising in the district; he has to provide an office, convenient and accessible to the diocese; clerks of respectability, and worthy of confidence, to whom an adequate salary must be paid; a large room properly fitted up for the reception of all the tithe maps, with conveniences for examining them and taking extracts therefrom; a record room for the keeping of the deeds and muniments relating to the diocese; to reply to a variety of inquiries, involving searches and extracts; to keep the diocesan records entered up and indexed, and not least among his duties, to make returns for Parliamentary purposes. These are his office duties, but he has to accompany the bishop on the occasion of consecrations, institutions and visitations, and it is obvious that for these purposes he must maintain a competent staff, and much personal trouble and expense are involved, for which he has no return.

It cannot have been considered by the framers of this Bill that the words "during pleasure" would have the effect of rendering a registrar liable to be ousted from his appointment without fault, would deprive the public of the benefit of years of experience, a well-ordered public office, the advantage of his intimate acquaintance with records

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which he has kept with industry and care, and would throw back upon the registrar his office, fitted for public convenience at a heavy cost, his clerks, peculiarly fitted for the work and that only, the loss of position (dearer to him than emoluments), and the loss of the emoluments themselves, while up to the present time this ancient office has been a patent.

I would venture to remind your Lordships that the registrars of the courts of justice, registrars of county courts, town clerks, clerks to Commissioners, and public boards, cannot be dismissed at pleasure; they are all sure of their posts during good behaviour, and more than one of these is a patent. In each of these the official has to maintain an appropriate office, with staff and plant, and he does so readily, because he is conscious that during good behaviour his tenure is secure.

But if this affects the registrars, I would submit that it affects the deputy registrars in a far higher degree. The principal or sinecure registrar, from being resident elsewhere, from his other professional engagements, and from his not being a notary, is unable and unfitted to take part in most of the duties of the office; the whole of the important duties, the responsibilities, and the expenses above alluded to as attaching to a registrar, are taken by the deputy registrar; and it is now contemplated that he may be suddenly deprived of position and superseded to the prejudice of his other professional work, and when he has perhaps become disqualified for resuming such work; that he will have thrown upon his hands the whole of what I have alluded to in the case of the registrar, who is acting and resident, and that too without compensation or appeal.

May I point out that, in the Probate Court Act, 20 & 21 Vict. c. 77, s. 103, the deputy registrars were recognised, and compensation awarded to them on loss of office. I would therefore respectfully urge that in this Bill the freehold rights incident to the ancient and canonical office of registrar should be recognised, that the Acts recited in the preamble should be omitted, and that the appointment should be during "good behaviour" and not "during pleasure." I would further submit that the deputy registrars, who are also patent officers, should be recognised by the Bill, and that by a re-modelling of Section 48 it should be accorded to them that upon the first vacancy in the office of registrar, from whatever cause, the deputy existing at the time of the passing of the Act should, as a matter of right, succeed to the post of principal if otherwise qualified.

Referring to Section 23 *et seq.*, I disapprove altogether of the proposal to pay by stamps, and to make us sellers of stamps. I venture to express a hope that this provision will be withdrawn. Such a procedure may work to advantage in the case of the Probate Court, where the business is transacted through a totally different class of persons, but even in that court the solicitors and their clerks procure the stamps, not through the registrar, but through the Inland Revenue Office. With the clergy however the case is different; their business is conducted personally, or by correspondence, and the payment by them in stamps, owing to their residence in distant localities, far from any distributor, would be inapplicable and inconvenient. Nothing would be gained, the revenue would not be increased, the convenience and comfort of the public in transacting their business would be taken away, and a duty would be cast upon the registrars and secretaries distasteful as it is singular.

I venture to make one remark as to Section 42. I know of no funds answering to the description of "funds applicable to the maintenance and repairs of the parish church," and the effect would be the same, as at present, with regard to the fees claimed from the churchwardens by the registrars, which come in many instances from the pockets of the churchwardens themselves. Everything should be done to smooth the way for the attendance of the laity at visitations, not simply to the qualifying, but to the service, and to the charge, and I would suggest that in the place of fees being claimed from the churchwardens, a fixed sum might well be allowed to them out of the fee fund provided by the Act, for their expenses, &c. on attending.

With regard to the expenses and fees now payable on institution to a rectory, vicarage, or perpetual curacy, I would remark, that in order to diminish the tax which these are upon the presentees of small livings, it would work well if a graduated scale of fees were fixed, regulated according to the value of the living. Up to 300*l.* per annum the scale might be small, and about 1 per cent.; above 300*l.* per annum, the fees fixed by the Order in Council of 1857 might be adopted; and above 600*l.* per annum a maximum sum might be fixed by this Act.

With regard to the expense of faculties, I would suggest that it be required that a faculty is to be procured whenever any work is done to the fabric of the church; and that for this faculty, if unopposed, a gross sum not exceeding 2*l.* 2*s.*, or according to the value of the work, shall be charged; thus assimilating the law of such faculties to that in the Public Worship Regulation Act. Of course, travelling expenses occasioned by the registrar's clerk having to affix and verify the notices must be considered, and these might be paid according to a fixed scale of mileage.

But, speaking as well for myself as for my brethren who are interested in this matter, I may say that in all which relates to fees and charges, any suggestions would be respectfully considered. A scale adapted to our various duties, and proportioned to the value thereof might be prepared, and I would venture to suggest that the revision of such Table should be made by those who are intimately acquainted with the dry business details of our duties as well as by those who view their practical effect. This might be accomplished by adding the name of the Provincial Judge (Lord Penzance) to those who are now empowered by Statute to revise the fees taken, under the Orders in Council of 24th July 1857 and 19th March 1869.

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2066. Earl *Nelson.*] I see that in Schedule B. of the Bill there is a certain sum put down to pay the registrars of each diocese; that would average a maximum sum of 800 *l.* a year in lieu of fees for the future appointments; that is to include the work of the bishop's registrar, the work of the registrar to the archdeacon, and the work of the bishop's secretary?

Yes.

2067. Do you consider that that is at all a fair proportion of the sum they now receive for those offices?

Your Lordship speaks of 800 *l.* a year; as I have only half the diocese, speaking of myself for example, that would represent to me 400 *l.* a year. I have 165 parishes, and Mr. Currey, the registrar at Lewes, has about 200. My total gross receipts, taking the average of the last three years, have been about from 300 *l.* to 400 *l.* a year, but then they were three very good years, and out of that all my expenses have to come.

2068. Then this sum would pay you for the duties?

Yes.

2069. *Chairman.*] That does not include the bishop's secretaryship, I suppose?

Yes. The fees and emoluments coming to me as deputy registrar are about 120 *l.* or 130 *l.* in the gross; what I receive as bishop's secretary is from 200 *l.* to 250 *l.* in the gross, and out of this, again, all expenses have to come.

2070. Earl *Nelson.*] You are deputy registrar, not registrar?

Yes.

2071. What does the registrar receive?

By custom he has always received about 15 *l.* a year.

2072. Not more than that?

No; by custom there was always paid to Lord Romilly the same sum, about 15 *l.*

2073. *Chairman.*] What is the object of any man holding the office?

He gets a guinea upon certain things; a guinea upon licenses, for example.

2074. Is that besides the 15 *l.*?

No, that is what makes it up. By custom certain sums upon licenses and certain sums upon consecrations go to the registrar.

2075. Do you mean that the emoluments of the registrar of Chichester are only about 15 *l.* a year?

Yes.

2076. Bishop of *Ely.*] Is he registrar of the diocese or registrar of one of the archdeaconries?

Registrar of one-half of the diocese, namely the Archdeaconry of Chichester, in the way I have explained. The whole fees received by me for the registry of the Archdeaconry of Chichester amount to, say, 120 *l.* or 130 *l.* a year in the gross; out of that I by custom pay to the registrar about 15 *l.*

2077. *Chairman.*] Does he get anything else?

Nothing; and out of that 15 *l.* a year he has to pay 4 *l.* a year for land tax.

2078. Earl *Nelson.*] Do you mean to say that he really gets nothing at all from any other source?

The registrar of that archdeaconry gets nothing at all from any other source known to me but 15 *l.* a year.

2079. *Chairman.*] Then can you explain why anybody should wish to hold the office of registrar in chief?

I cannot.

2080. Before the passing of the Probate Act, the office was important, of course?

Yes.

2081. We understand that the present registrar receives 15 *l.* a year?

Yes; the present registrar, Mr. Durnford, continues that which he found to be the custom in Lord Romilly's case; Lord Romilly held the office as trustee of the Otter family. With regard to the Consistory Courts, I should like to mention

mention that the court and the office of chancellor has really become almost obsolete. For a period of 25 years, there have actually been only three cases of contentious business in the chancellor's court.

2082. Who is now your chancellor?
Mr. Wintle.

2083. A son of the late bishop?
A son of the late bishop. He is chancellor, official principal, and vicar general.

2084. And he has only had three cases in 20 years?
Only three. One of those was a case of immorality arising out of a presentation; it never came to a formal hearing. Another was a case with regard to pews; and the other was the case of a clergyman, a well-known case.

2085. Of course there are several out of court?
Yes.

2086. Have you seen the provision in this Bill as to the payment of the chancellors?
Yes.

2087. Do you consider that 200 *l.* a year is sufficient pay for the duties performed by the chancellors?
Speaking of my own portion of the diocese, I should say it was ample.

2088. *Lord Steward.*] Whose son did you say that Mr. Wintle, your chancellor, was?
The son of the last bishop, Bishop Gilbert. He was first Registrar of the Archdeaconry of Lewes, then when Sir Robert Phillimore became Judge of the Arches Court, Mr. Wintle was transferred from Lewes, and became chancellor of the diocese.

2089. *Chairman.*] How did Sir Robert Phillimore's case affect it?
He was chancellor previously. There have only been those three cases, and the chancellor's office, so far as my archdeaconry is concerned, is worth about 20 *l.* a year, out of that he has to pay 10 *l.* per annum for land tax.

2090. Therefore your impression is that the office of chancellor in the diocese is worth 10 *l.* a year?
No; that is for that half of the diocese. West Sussex, in fact.

2091. Is he the legal adviser of the bishop?
He is considered to be so, but there is never a necessity for troubling him, because in any case in which the bishop desires advice, he would either apply to his London secretary, Mr. Burder, or he would speak to me; or if it were at the other end of the diocese (the Lewes end), and a matter having reference to the Registrar's duty, he would speak to Mr. Currey.

2092. Is there any other point which you wish to mention?
No.

2093. I suppose you would say, that the position of the diocese of Chichester is unlike that of most dioceses in many respects?
It is peculiar in the respect I have just adverted to, that the sinecure element is found in it.

2094. And there is this division of the diocese?
Yes.

2095. *Lord Steward.*] And the non-contentious character of the business?
Yes; there has not been a contentious case in the Diocesan Court, with the exception of the three I have referred to, for 25 years, and there has not been one for the last 10 years.

The Witness is directed to withdraw.

Ordered, That the Committee be adjourned to Wednesday next, Twelve o'clock.

# *Die Mercurii, 29° Martii,* 1876.

PRESENT:

| | |
|---|---|
| Lord Archbishop of CANTERBURY. | Lord Bishop of GLOUCESTER and BRISTOL. |
| LORD STEWARD. | |
| Earl STANHOPE. | Lord Bishop of ELY. |
| Earl NELSON. | Lord HATHERLEY. |
| Viscount HALIFAX. | Lord WINMARLEIGH. |

THE LORD ARCHBISHOP OF CANTERBURY, IN THE CHAIR.

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The Reverend THOMAS ESPINELL ESPIN, B.D., is called in; and Examined, as follows:

Rev. *T. E. Espin,* B.D.

29th March 1876.

2096. *Chairman.*] YOU are Chancellor of the Diocese of Chester, I believe?
I am.

2097. How long have you held the office?
I have held the office since the 21st of July 1873.

2098. And are now, I presume, tolerably familiar with all the duties of the office?
I am.

2099. Was your predecessor a clergyman?
Yes.

2100. Has it been the custom in the Diocese of Chester to have a clerical chancellor?
I think there have been only two laymen.

2101. Your predecessor was one?
Yes; and Chancellor Raikes before him.

2102. Who was your predecessor?
The Reverend Chancellor Thurlow.

2103. And his predecessor was Chancellor Raikes?
Yes.

2104. Do you know that Chancellor Raikes's son was a registrar, and was not a clergyman?
I do not know that, but I think it is very likely.

2105. Are there any advantages, in your opinion, in that office being held by a clergyman?
Certainly.

2106. Will you state to the Committee what the advantages are?
I think, in the first place, it is very important that the chancellor should reside in the diocese; and having the power to appoint a clergyman as chancellor is much more likely to enable the bishop to find a resident chancellor, which I think is really essential for the proper discharge of the duties of the office.

Rev. *T. E. Espin*, B.D.

29th March 1876.

2107. Why do you think it desirable that the chancellor should be resident?
All I can say is, that I think it would be almost useless having a chancellor at all in the Diocese of Chester unless he was upon the spot.

2108. His duties are onerous, are they not?
Certainly.

2109. What does he do?
I hold a court about every three weeks.

2110. Is that in contentious matters?
Occasionally.

2111. It has been stated that in some of the other dioceses there has not been a contentious suit above once in ten years in the Consistorial Court?
The reason of that is, that the chancellor does not reside or do his duty.

2112. Do you think there would be more contention if the chancellor resided?
I do not know; I doubt that very much; I think a great deal of contention has arisen from the fact that the chancellor does not reside in his diocese. I have never had an appeal from any of my decisions, and I have succeeded, in all cases hitherto, in disposing of the matters before me without any further difficulties.

2113. You think it better that the cases should be so disposed of than sent to a higher court by letter of request?
Yes, as regards such matters as are generally likely to come before the Diocesan Court. Of course there might be cases in which it might be desirable that the cases should come before a higher court, but the large majority of cases are cases in which there are no doubtful or complicated questions of law arising at all; it is really rather a sort of arbitration, I might say.

2114. Cases having reference to pews in churches, for example?
Yes; we have had some such cases, and also other important cases.

2115. You think it is less expensive that those cases should be decided in the Consistorial Court, than by a higher court?
I am sure of it, especially if the arrangements of the Consistorial Court are made as they ought to be.

2116. Will you state what, in your opinion, the arrangements should be?
As soon as I became chancellor I immediately did away with the necessity of employing proctors in my court; and the incumbents, the churchwardens, or any parishioners are free to come and state their own case, and the matter is generally disposed of at once after I have heard what they have to say.

2117. So that, in fact, the lawyers have very little to do with your court?
It appears that we have had to appoint another proctor recently, owing to more business coming in. Sometimes it may not be convenient for the incumbent or churchwardens to attend personally, and then they pay some small fee to the proctor who represents them, but they like, as a rule, to state their own views; the two sides state their view, the matter is argued, and I give a decision, which arrangement has proved satisfactory hitherto.

2118. Was that arrangement introduced by yourself?
In concert with my excellent registrar; we agreed at once that we would not require the employment of proctors, but would leave the parishioners, the incumbents, and the churchwardens free to state their own case, and that system has been found to work admirably.

2119. Is notice given to the opposing party?
Certainly; a citation is always fixed upon the church door; in fact, it is one of the regulations I made, that in the event of any faculty business coming before the court, a citation should be affixed to the church door for two Sundays.

2120. *Lord Steward.*] Who affixes that citation to the church door?
The incumbent.

2121. *Chairman.*] Not the apparitor?
Not the apparitor.

Rev. *T. E. Espin*, B.D. 29th March 1876.

2122. Bishop of *Ely.*] Do you, as a matter of course, take your seat in the court once in three weeks, or is that dependent on your knowing that there is something going forward?

I sit every three weeks in term time, and sometimes oftener; I have had to sit sometimes every fortnight, or within seven days. I have here a list of the faculties granted by me since I became Chancellor of Chester, which I crave leave to put in evidence.—(*The same is handed in*).

2123. *Chairman.*] Are the faculties granted in court or in chambers?

The faculties are granted in court always, or else there would be no opportunity for the opponents to state their case.

2124. Viscount *Halifax.*] Where do you hold your court?

At Chester, in the Consistorial Court, in the cathedral.

2125. All parties have to come to Chester, to appear before the court?

Yes, they do.

2126. Bishop of *Ely.*] You think it would be impossible for a lay chancellor to do that?

I do not say that; but I say a non-resident chancellor in the diocese could not possibly do the work of the Chancellor of Chester. The work would be, as it is in most dioceses, simply left undone, if the chancellor was not resident, or at any rate within easy reach of Chester. I have another list here, which shows the cost of faculties granted in 1875, as well as their number. (*The same is handed in.*) The former return does not show the cost of the faculties, because unfortunately it did not occur to me when I first became chancellor, to inquire what the works authorised would cost; but the amount last year was over 26,000 *l.*, and there are six faculties out of 29, in which the cost could not be ascertained. For instance, the Duke of Westminster very munificently restored one chancel, and I could not very well ask what his Grace proposed to spend.

2127. *Chairman.*] Are faculties necessary in the case of all alterations of churches?

All permanent alterations.

2128. Does that extend even to minute matters?

I enforce the rule with a good deal of strictness with respect to permanent additions or alterations in the churches. Even stained glass windows I require to be brought before me, and occasionally trouble arises out of them. Designs are introduced which are perhaps objected to by some parishioners.

2129. Do you think that some advantage arises from granting unopposed faculties openly in court?

I am sure of it.

2130. Will you explain to the Committee why you think so?

Because I am sure that a great deal of trouble has arisen from innovations and alterations being introduced in churches, without any due notice or authority.

2131. But are you aware that if a faculty is applied for, notice is given to the vestry, and the matter is made the subject of a vote in the vestry; and if there is no opposition, then it is the custom in other dioceses for the faculty to issue as a matter of course?

I do not consider under the present circumstances that a vote of the vestry is at all material.

2132. I do not mean that it binds the chancellor, but do you not take the vote of the vestry?

Not necessarily. When due notice is given to the parishioners that a faculty to make certain alterations in a church is applied for, and nobody opposes the application, it is not necessary to take the vote of the vestry. We are glad to have the vote of the vestry, and always pay respectful attention to it, but we do not in all cases require it.

2133. Have you any acquaintance with other dioceses, so as to know whether it is customary to have the vote of the vestry generally?

I cannot say what may be the practice in other dioceses.

Rev. *T. E. Espin*, B.D. 29th March 1876.

2134. Earl *Nelson.*] I think I understood you to state that you thought there should be a discretion with reference to demanding a faculty fee, and that it should not be demanded in every case?

We have often excused the fee. I reduced the fee. It was one of my first acts as chancellor to reduce the fee to the very lowest amount the work could be done for. I cut it down to 2 *l.* 2 *s.* I should not have thought it right to enforce the law strictly, if the fee had remained as I found it, which was 5 *l.* 5 *s.* at the lowest.

2135. *Chairman.*] That is two guineas besides the stamp?

Yes; it is 2 *l.* 12 *s.*, and the stamp costs 10 *s.* of this total.

2136. That is the case in other dioceses, is it not?

It is so in the Diocese of Peterborough, and, I believe, in the Diocese of Canterbury.

2137. Earl *Nelson.*] Would the fee be the same for rebuilding a church as for merely putting up a stained glass window?

Of course in unopposed cases it would be the same always; but, may I observe, that I encourage any persons who apply to me for faculties to put in as many improvements as they like in the same faculty. For instance, at the present time, in a very handsome new church at Liverpool, there is a design being prepared for all the windows throughout the church, by the same draughtsmen and window makers, and I shall grant a faculty for the whole.

2138. Bishop of *Ely.*] Do you consider that requiring a faculty for every small permanent alteration has a tendency to stop improvements?

On the contrary, I am inclined to think that it decidedly multiplies improvements; things are suggested to people by these matters being discussed in court and reported to the public, and one man encourages another. I am quite sure that since this policy was adopted a very large, and, I think, an increased number of churches have been altered and improved in the diocese.

2139. Lord *Winmarleigh.*] Would it require a fee of 2 *l.* 12 *s.* to put a painted window into a church?

In very small cases I have sometimes said to the clergyman, "I shall not interfere; I think it is a very good design: if you like to run the risk of putting the window in without a faculty you can, or if you like to wait until you want to do something more, and then put your new improvements into a faculty, and at the same time to ask for a decree confirmatory of the old one, I have no objection." I do not wish to make the regulation about faculties oppressive to the clergy.

2140. Bishop of *Ely.*] Do you require a faculty for putting up monuments within the church?

Yes, within the church we do, but not in the churchyard.

2141. Do you require a faculty in the case of a tablet?

Yes, as a rule, but I have sometimes said that it could be done without the necessity of applying for a faculty.

2142. Therefore you treat a marble tablet and a memorial window as identical?

Yes, I do; but I should not hesitate to write a letter authorising the erection of a tablet, and I have done so.

2143. Nor of a window?

No, when it was unimportant. For instance, if it were a little window in the nave, I should not think it necessary to take a faculty out for that; I should say, you had better put it into the next faculty you take out.

2144. Viscount *Halifax.*] Suppose a window of that kind were put in without a faculty, what would happen?

It would probably happen in our diocese, as it has happened in other dioceses, that if there is any little parochial trouble the matter is taken hold of and accusations of acting illegally are brought against the clergyman. I had an accusation rising out of a smaller matter than the putting up of a window, by a parishioner who perhaps had a reason for quarrelling, and picked a hole in the clergyman's conduct.

2145. What

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2145. What happened in that case?
That was one of the most costly suits I have ever had in my court. It was a very small affair, and eventually I had to decree a confirmatory faculty. There was nothing whatever to object to, but a reredos had been erected without any authority, and the clergyman and the churchwardens had to pay a good deal of money on account of it.

2146. *Lord Steward.*] Then the omission, in fact, of taking the precaution of obtaining a faculty beforehand was really the means of fostering litigation to a large extent?
It was in that instance.

2147. Do you think if a faculty had been applied for in the first instance any serious objection would have been made on the part of those who afterwards made the difficulty?
I do not think so.

2148. The thing itself upon examination appeared to you proper to be done?
Yes, it was unobjectionable; and I confess if I had been asked about it, I should have granted a faculty without hesitation, except that I thought it was hardly worthy of the church.

2149. Bishop of *Ely.*] During the time you have held the office have you found it necessary to have recourse to a lawyer for legal advice?
Never.

2150. No case has occurred in which you found it necessary to have recourse to a lawyer for legal advice?
No; my registrar is a notary public and a solicitor, and a very clear-headed and painstaking man, and he has given me every assistance that I needed.

2151. *Chairman.*] Who is the registrar?
Mr. John Gamon; I would suggest that he should be asked to give evidence before this Committee. I think he would give valuable evidence.

2152. *Lord Steward.*] You told the Committee that none of your decisions had been appealed from; have many cases been taken by letters of request outside your court to the Court of Arches?
There have not been any since I have been chancellor.

2153. So that, in fact, all the business, both contentious and non-contentious of the diocese has come under your judicial notice?
Yes, all business that has at all fallen within the compass of my work.

2154. Bishop of *Ely.*] Have you had any cases of church discipline, or have they been only faculty cases?
I have had cases of church discipline in which I have sat under the Church Discipline Act on the bishop's nomination.

2155. *Chairman.*] Is that within the last two years?
Yes, that is within the last two years.

2156. Earl *Nelson.*] Yours is, in fact, the case of a diocese administering its own affairs?
Yes, quite so.

2157. And you find that that is a cheaper plan?
The fact is that it costs a man simply his railway fare to come to Chester, and 2 *l.* 12 *s.* for the faculty, or whatever it may be; and I also find that now that the working of the court is known, churchwardens and incumbents constantly come to me before they come for a faculty, and I advise them about their works, and in any very important case I go over and see the church, and advise with them then and there what they should do.

2158. Lord *Winmarleigh.*] What is the expense of obtaining a faculty besides the fee?
There is no expense beyond that.

2159. The fee includes the cost of drawing the faculty?
The 2 *l.* 12 *s.* includes the stamp, and everything else.

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2160. Earl *Nelson.*] The more private work which you do is just that sort of work that could not be done by a non-resident chancellor?
Precisely.

2161. And that must naturally tend to stop litigation in the first onset?
Yes; in several cases persons who have been interested in the work, and would have more or less differed about it, have met me by invitation, and we have gone into the whole of the projected matter upon the spot, and it has all ended happily.

2162. *Chairman.*] Do you think the same would have happened if you had been a member of the legal profession?
I cannot say about that; the objection I have to the proposal of the Bill, which makes it necessary that a barrister should be chancellor, is simply that in our diocese you would hardly get a resident barrister who was at all well qualified for the post; I do not wish it to be exclusively a clerical office; all I wish to object to is the exclusion of clergymen from the post.

2163. You think the exclusion of clergymen from the office of chancellor would probably lead to your having a non-resident chancellor?
I feel sure of it.

2164. And you think a non-resident chancellor would be an evil?
Yes; I have no doubt as regards the Diocese of Chester it would be a very serious matter.

2165. Are you aware that the chancellors of other dioceses, who are non-resident, exercise control over the issue of faculties?
They have the plans sent up to their chambers in London.

2166. What difficulty do you apprehend from that?
No difficulty; but I apprehend that it is much more advantageous to know the church, the spot, and the people generally.

2167. You stated, did you not, that there were very few appeals from your court?
There have been none.

2168. Has there been any appeal to the Chancery Court of York from your diocese?
There has not been an appeal upon any matter since I have been chancellor.

2169. Not from Liverpool?
Not since I have been chancellor; there is a case pending now in the Chancery Court of York from Liverpool, but that case arose before I was chancellor.

2170. Is that under the Church Discipline Act?
The case was sent by letters of request in Chancellor Thurlow's day direct to York.

2171. You stated that you have yourself sat in cases under the Church Discipline Act?
Yes, I have.

2172. How was the court constituted in that case?
The only case in which I sat was on a *primâ facie* commission; we disposed of the case entirely; the clergymen submitted to our decision.

2173. The matter never came before the Consistorial Court?
No; it came before me as one of the *primâ facie* commissioners.

2174. You acted as chief commissioner, did you not?
I acted as chief commissioner.

2175. And that case never came into court?
No; it never came before anybody except the commissioners.

2176. Who are not a court; are they?
They are a court, I believe.

2177. Bishop of *Ely.*] I asked whether in your Consistorial Court you never had a case under the Clergy Discipline Act?

I believe

I believe every case of clergy discipline must be tried under the Clergy Discipline Act; it cannot come before the Consistorial Court.

2178. *Chairman.*] It comes under the substitute for the Consistorial Court, which is mentioned in the Clergy Discipline Act?

Quite so; I think it would be a great deal better if the matter came before the Consistorial Court.

2179. Will you explain to the Committee the difference between a Consistorial Court and that court which under the Clergy Discipline Act was appointed to take the place of the Consistorial Court?

In the Consistorial Court the chancellor is judge unless the bishop chooses to sit himself; under the Clergy Discipline Act there must be first of all a *primâ facie* commission, and then after that commission has reported, unless the defendant submits, then the bishop must try the matter with another commission.

2180. Do you consider that a commission or a court?

A court in which the bishop sits in person.

2181. Will you explain to the Committee the difference between that court and the Consistorial Court?

In the Consistorial Court the chancellor is the judge. In the other case you have a double trial, and there are very heavy expenses involved.

2182. But what I want to get at is the constitution of that court which follows the commission?

It must be the bishop and three assessors.

2183. One of whom must be a barrister?

One of whom must be a barrister of a certain standing, one of the others may be the chancellor, or one of the archdeacons, or the dean, and I think the third assessor is entirely at the discretion of the bishop.

2184. Then, as I understand, since you became chancellor there has been no case of clergy discipline, except those which have been arranged at the preliminary commission?

We have had two cases since I have been chancellor. In the second case I did not sit as the bishop's assessor, the defendant was a gentleman whom I knew well, and it would have been very painful for me to have taken any part in the proceedings.

2185. That case was arranged also, was it not?

No, I am afraid not. I am afraid the case will go to the chancellor at York. May I remark, with regard to another case of the same sort in the diocese, with which I was well acquainted, as being the bishop's chaplain, although I was not chancellor, and did not sit, that it was a very plain case of fact; it went through the commission and came before the bishop and his assessors, and it cost, I believe, about 500 *l.*; although it was one of the plainest cases of fact; so cumbrous is the present procedure under the Clergy Discipline Act.

2186. Whereas if it could have come, which it could not, into the Consistorial Court, it might have been disposed of at much less expense?

I am quite satisfied that it could have been disposed of much more easily and at much less cost.

2187. Why do you think so?

There is a double trial in the first place, which leads to expense; it is trying the same thing over and over again. Lawyers are frequently employed in both trials, and there is a double bill of costs on both sides. It would be a clear gain to have one trial instead of two, and there are two appeals afterwards, so that if there is anything wrong done there is plenty of opportunity for redressing it.

2188. Supposing there had been a case brought before the Consistorial Court involving deprivation from a living, would not the person accused have called counsel from London to appear before you?

It is very likely.

2189. And would not the expense then have been very great indeed?

The parties employ counsel now, and, of course, incur any expense they think proper;

Rev. *T. E. Espin*, B.D.

29th March 1876.

proper; but the evil of the present system is that you have counsel employed twice over, first, before the commission, and then before the bishop's court.

2190. But may it not be a reason for the comparative inexpensiveness of the Consistorial Court that the cases which come before it are such as do not induce people to employ expensive counsel from London?

No doubt that is one good reason, but I have had counsel down from London before my court.

2191. Were the proceedings equally inexpensive in those cases?

I could not say that. The costs, so far as they passed before the registrar at Chester, did not amount to much, but what they paid Dr. Tristram and Dr. Phillimore I cannot say.

2192. The fees of counsel do not appear?

They do not.

2193. Was this 500 *l.* which you mentioned merely for the fees of the court?

I cannot tell you; I was not then chancellor; I simply know as the bishop's chaplain, and, of course, in confidential relations with him, that the bills, so far as they came under his knowledge, amounted to something like that sum, and I believe the bishop paid a good deal himself which he might fairly have thrown upon the parties.

2194. Perhaps some of the expense incurred was in summoning witnesses from a distance?

I do not think any very large proportion of the expenses was incurred in that way; but there were expenses of all kinds.

2195. I do not quite clearly apprehend why the Consistorial Court should be a cheaper tribunal than the court constituted under the Clergy Discipline Act, which is the preliminary commission?

The latter method of procedure doubles the cost, and if I may say so, doubles the scandal, because it is known that the commissioners are going to sit, and the whole of the neighbourhood is, of course, aware of what is going on, and there is a great deal said which is very painful indeed in those cases. It is very much better, whether the matter is before the Consistorial Court or any other court, that there should be only one trial before the Court of First Instance, at any rate.

2196. But are you aware that those cases cannot come before the Consistorial Court?

I am quite aware of that.

2197. And are you also aware that this Bill does not touch the Consistorial Court?

I am quite aware of that.

2198. Bishop of *Ely*.] Did I understand you to say that non-resident chancellors do not do their duty?

They could not do the duties which I do; I do not wish to say more than that.

2199. Do you consider that, in the process which you carry on in these diocesan matters, you at all go beyond the duty of chancellor; in fact, that you do more than the duty which absolutely appertains to a chancellor?

No, I think not; I consider that the chancellor's office is administrative as well as judicial; and there are a very large number of cases which never appear in my court, which I dispose of quietly; I think there are few days in which I do not get one or two letters from churchwardens or incumbents; sometimes they ask for an interview, and they come over and see me, and sometimes I go and see them.

2200. Does it, in your opinion, properly form part of the duty of a chancellor to deal with cases in that private individual capacity?

Certainly. I think the Diocese of Chester is in some ways very peculiar; there is a class of cases, which his Grace has not mentioned, which constantly come before me, and that is the regulating of the fees of parishes. I do not know whether the Committee are aware that in one of the Church Building Acts, I think it is the 5th and 6th Victoria, the fees of parishes are left to be regulated by the chancellor; now perhaps three-fourths of the parishes in the Diocese of Chester are

are new parishes; I have introduced a system there which I think works well; I never authorise any fees privately; I always give public notice to the incumbents and churchwardens, and give an opportunity to anyone who wishes to make objections, and I find that this course has allayed a great deal of trouble about these small matters.

2201. *Lord Steward.*] Will you explain to the Committee what those fees are?
They are fees for marriages, churchings, burials, and so on; fees, in fact, for all offices of the Church.

2202. *Chairman.*] And you think that those are better regulated in open court than if they were regulated by a chancellor living in London in his chambers?
I have not a doubt of it, because I never authorise them without the approval of the churchwardens present personally in court, or at least without having a written document from them to say that they think the proposed fees are reasonable.

2203. *Lord Steward.*] Do you ever authorise a fee for baptism?
Never, nor for churchings. One of the Church Building Acts empowers me to fix a fee for churchings and baptisms, but I have refused to do so.

2204. Lord *Winmarleigh.*] Nor for registration of marriages?
Certainly not.

2205. *Chairman.*] You regulate the fees of new parishes you say, but not of old ones?
I have been asked to do that. I am authorised to fix the fees of new parishes, but I cannot authoritatively fix the fees of old parishes.

2206. You only recommend in those cases?
I have approved of certain Tables which have been submitted to me by the incumbent's churchwardens of old parishes, and I tell them that I have not the slightest objection to give them my approval in a formal way, but that I have no power to fix their fees for them.

2207. It is merely a recommendation, is it not?
It is an approval, and I have no doubt that it would quite suffice to enable a clergyman to recover his fees if there were a dispute about them.

2208. Would that enable a clergyman to enforce his fees in a court?
Yes, in the County Court; because after the fees had been submitted by the incumbent and wardens to the bishop's officer, and approved by him, it is not likely that any court would refuse to take cognisance of them.

2209. Earl *Nelson.*] Notwithstanding the prescriptive right which is claimed for the fees in old parishes?
That is my opinion. I have no doubt about it.

2210. Lord *Winmarleigh.*] If you were to raise the fees, do you consider they could be recovered in a court of law?
I have done it in some cases where there has been a valid reason for it, and it has been suggested and approved by the churchwardens; it soon passes into usage.

2211. *Chairman.*] Do you consider that the office of chancellor which you hold is a two-fold office; you hold the office of vicar-general and official principal; do you consider that to be a two-fold office, partly judicial and partly otherwise?
Certainly; in fact, I think that the strictly judicial part of the office is the one which gives me the least trouble; my business in court is nothing, compared to the business which I have to do of a different character.

2212. Your duty as official principal is confined to contentious cases; is that so?
My duty as official principal is not necessarily confined to contentious cases, but to cases which appear in court.

2113. Or which might appear in court?
Yes, or which might appear in court.

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2114. Which cases, in other dioceses, appear to be settled without appearing in court?
Yes.

2115. I think you stated to the Committee that no cases of clergy discipline have come before you, except when sitting in your capacity as member of a Commission?
That is so.

2216. Have there been many commissions issued in the diocese of Chester while you have been chancellor?
There have been only two.

2217. One of them you mentioned to the Committee?
Yes.

2218. And in that case the bishop held a court under the Church Discipline Act?
He did.

2219. He did not send it to the chancellor at York?
He did not.

2220. If the bishop consults you with reference to sending a case straight to the provincial court by letters of request, should you generally advise him to do so, or to sit in this intermediate court?
It would entirely depend upon the case; I could not say generally what I should advise; I should certainly consider the character of the case. I am quite sure that in a large number of cases a hearing in the Court of First Instance would disencumber a case of many irrelevant elements, and enable the superior court to dispose of it much more easily than it could do if sent straight away by letters of request.

2221. And you think there might be many cases in which that would be desirable, even though it made four trials instead of three: that is to say, one before the commission, one before the bishop's court, one before the archbishop's court, and one before the Privy Council?
I think that four trials is such an evil that I have a strong bias, whilst the law remains as it is, in favour of advising the bishop to send the case, under the Clergy Discipline Act, direct to York.

2222. Are you aware that this court of the bishop under the Clergy Discipline Act has been very rarely called together in any diocese in England?
I am quite aware of that, and I do not wonder at it at all.

2223. Do you know in how many cases it has been put in requisition?
I do not know at all.

2224. There has been one instance within your knowledge?
There have been two cases since I have been connected with the diocese of Chester in which the bishop has sat in person, but there has been only one since I have been chancellor.

2225. Were those appealed from?
The one which is going on is under appeal.

2226. They began in the bishop's court first, did they not?
Yes, they came before the bishop; and his decision is now appealed from, in the last case, to York.

2227. It has been stated that in a majority of the dioceses the consistorial court for contentious cases has become almost a nullity; that is not the case in Chester, of course?
That is not the case in Chester.

2228. Earl *Nelson*.] Do you consider one of the chief reasons for its having become a nullity is, that the chancellors are non-resident?
That is so, if I may say what I think.

2229. *Chairman*.] Are you aware of any other dioceses in which there are regular meetings of the consistorial court?
I am not aware; I believe that in Peterborough the court sits regularly.

2230. Is

2230. Is there a clerical chancellor at Peterborough?
There is a clerical chancellor; Chancellor Wales.

2231. Is there any other clerical chancellor in England?
The Chancellor of Carlisle.

2232. Chancellor Burton?
Yes; I think there are seven clerical chancellors altogether.

2233. You have no knowledge of whether the courts sit in all those cases?
I really do not know; we are really so busy in the diocese of Chester that I cannot say much with reference to other dioceses.

2234. Now what duties have you to perform as vicar general?
I do not think I could distinguish my duties as vicar general from those as official principal; the chancellor combines both.

2235. You have the issuing of marriage licenses, have you not?
I have.

2236. That would be as vicar general?
Perhaps it would.

2237. Lord *Winmarleigh.*] Are they separate appointments?
No, they are made together by letters patent from the bishop.

2238. *Chairman.*] Do difficult questions of law ever arise with reference to marriage licenses?
We have not had any difficult questions of law arise. I very often have in one way or another to be consulted about matters which arise under the marriage licenses. We have a great many marriage licenses in the diocese of Chester; last year there were 1,764 marriage licenses issued, and I have about 130 surrogates. Of course there are always questions arising, and sometimes the surrogates do irregular things, and I have to pull them up.

2239. The town of Liverpool is within your jurisdiction, is it not?
It is.

2240. The Committee have in evidence from the Vicar General of Canterbury that in issuing those marriage licenses in London there are very often found important and difficult points of law requiring settlement; that would not be your experience, I believe?
We have not had any difficult points of law since I have been chancellor. There is a very painful and awkward case occurring sometimes of divorced persons applying for a license.

2241. Bishop of *Ely.*] Do you grant licenses in such cases?
I believe they have been granted, but I have not been aware of it. I found that one had been granted a little time ago.

2242. Do you supply to the surrogates any special form adapted to the cases of divorced persons?
A special form is supplied by the registrar at Chester. There was one case a little time ago; but it really is a very painful matter, and I am not quite sure whether I have the power by law to refuse a license, but I should be very much disposed to do it if I had the power.

2243. *Chairman.*] Are all marriage licenses issued direct from the registry?
They are all issued direct from the registry; the surrogate takes the affidavit of the party applying for a license, and sends the affidavit to the registry, and the registry sends the license.

2244. Then, supposing a person in Liverpool wanted a license; what is the process adopted.
That person goes to the surrogate, who takes the affidavit, and the affidavit goes to the registry at Chester, and the license issues from the registry.

2245. The license goes by post, does it not?
It will go in the course of a day from Chester to Liverpool; we should get into great difficulties, I am sure, if our surrogates granted the licenses directly.

2246. It is in evidence before this Committee, that another duty of the vicar general is to act as the legal adviser of the bishop in all difficult matters of law; do you perform that duty?
I advise with the bishop about such matters, and I did so sometimes before I was chancellor.

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2247. Have you had any special legal training?
I have given a great deal of attention to Church legislation for many years past, but I have had no special legal training.

2248. In a case of difficulty you would be assisted by the registrar, who is a professional lawyer?
Yes; and a resident in Chester. We very often have cases of more or less legal difficulty, but the registrar and myself generally advise the bishop upon them, and thus far we have been successful.

2249. And you are not aware that the Bishop of Chester has been obliged to have recourse to other legal advice in consequence of any difficulty arising which you did not feel yourselves competent to deal with?
I think not; I may say that, so far as I remember, his Lordship has never taken a legal opinion about diocesan matters since he has been bishop. I think in one or two cases he has written privately to Sir Robert Phillimore, and I have seen the letters, but that has been for greater assurance. We have generally seen our way, and we have had some very awkward cases in the diocese of Chester. I will explain how these cases arise. There are a very large number of new parishes, as I have stated; those churches were built in Bishop Sumner's time, in many cases with most unsatisfactory arrangements as regards trust, patronage, and pew rents, and many other points of that sort, and difficulties are constantly arising with respect to churches built 30 or 40 years ago, with trust-deeds of that character. It was very urgent at that time to multiply the churches without further delay, and that was done in a manner which gives us a great deal of trouble now.

2250. Are you aware how many churches were built in Bishop Sumner's time?
I forget the number, but it was a very large number indeed; but we have eight or nine additional churches built in the diocese of Chester every year. The diocese doubles itself every 50 years in point of churches.

2251. Then, notwithstanding all these legal difficulties, you are able to dispense very much with the assistance of gentlemen of the legal profession?
We have never had occasion to resort to them at all; we are very fortunate in our registrar; he is a very excellent man, who does not spare himself at all. I do not remember any case in which further legal advice has been required.

2252. You hold the living of Wallasey, do you not?
Yes.

2253. Is that near Chester?
Yes, it is.

2254. Is that a populous place?
The old parish is populous; it has been sub-divided; we have four churches in the parish, and are building another. The total population connected with the five churches is, I may say, about 16,000 people.

2255. Those churches are not all under your pastoral superintendence, I presume?
No, they are not.

2256. What is the size of the parish which is under your personal superintendence?
It has over 2,000 people.

2257. Have you a curate?
I have three curates.

2258. You have three curates for 2,000 people?
One of the churches is a chapel of ease; it has a sort of nominal district, and one of my curates works in that district.

2259. So that your duties as chancellor do not in any way interfere with your pastoral duties?
No, they do not interfere with my pastoral duties, but I am very busy between the two. Our diocese is not very large in area; you can easily get to every part of it, although it contains a million and a quarter of people.

2260. You are also rural dean, are you not?
I have been made rural dean.

2261. There

2261. There is no difficulty arising between that office and the office of chancellor, is there?
I wish for some reasons the office of rural dean were held by some one else.

2262. The rural dean is properly responsible to the archdeacon, is he not?
I suppose he is.

2263. And you had rather that that particular office should be held by some one else?
Yes, I had rather.

2264. And you are also chaplain to the bishop?
Yes, I am.

2265. And there is no difficulty whatever arising from that?
No, not at all.

2266. *Lord Steward.*] Have you made yourself acquainted with the provisions of this Bill with regard to the union of the offices of bishop's registrar and secretary?
I have.

2267. Do you approve of that proposal?
I think it would be a very unsatisfactory arrangement indeed.

2268. *Chairman.*] Is Mr. Gamon the bishop's secretary?
Yes, he is.

2269. And he is also registrar, is he not?
Yes.

2270. Are there difficulties arising with regard to him?
Not in that particular case. The reason I object to the union of those two offices is, that I think the office of registrar ought to be a freehold office, tenable during good behaviour. I am speaking now strictly from my own experience of the diocese of Chester; I feel sure that if the registrar had a temporary office, and one badly paid, the clergy would suffer severely.

2271. He is not deputy registrar, is he?
No, he does the duty in person.

2272. Has there been a deputy registrar at any time in your memory?
Yes, in the time of the late registrar there was a deputy registrar.

2273. Who was deputy registrar?
Mr. Parry.

2274. Did the duties suffer in consequence of his being deputy registrar; I am not making any reflection upon him, but as being more difficult to carry them out?
I can hardly speak with reference to that. Mr. Parry was a man in easy circumstances, and I do not doubt he did the duties very well.

2275. He held the office of deputy registrar at the pleasure of the registrar, did he not?
Yes; Mr. Graham was then registrar.

2276. But you think that evils are likely to arise from that tenure of the office?
I am very much afraid of it.

2277. You stated that the office ought to be a freehold office, tenable during good behaviour?
Yes, I did.

2278. You do not think it necessary that the office should be a freehold office, I suppose?
It should be tenable during good behaviour.

2279. Would it appear to you that any intermediate course between the office being *quasi* freehold, and its being held at pleasure, might be thought of which would meet the difficulty?
None has occurred to me.

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2280. But would you object to any such intermediate course were it suggested to you?

I object to the proposal of the Bill in the interest of the clergy of the diocese.

2281. But supposing it were proposed that the registrar's office should be held upon this tenure, that he were capable of being removed on reasons assigned by the person who removed him, that is to say, by the bishop, would any inconvenience arise from that, in your opinion?

Perhaps not.

2282. As the matter stands at present, I suppose there is nothing to prevent the registrar appointing a deputy?

No, I think not; and I should be very glad to see the registrar required to do his duties in person; I think that is important.

2283. That is one of the provisions of this Bill?

Yes, it is; and I think it is a very wise provision. The registrar with us gives the clergy a great deal of very valuable advice, and he is in constant communication with them, and I should very much dread, as far as the diocese of Chester is concerned, having a registrar who was only temporarily in office, or who was not a well paid and trustworthy man.

2284. You do not think the bishop's secretary gives such advice in his capacity as bishop's secretary?

I cannot say what is done in other dioceses, but in our diocese, as you know, the same man holds both offices.

2285. But you can hardly draw a distinction between the advice which he gives as bishop's secretary and the advice which he gives as registrar?

I cannot; I know that the late deputy registrar did very much the same in the way of helping the clergy before I became chancellor, and I have myself had assistance from him.

2286. Lord *Winmarleigh.*] Is the advice given gratuitously in both capacities?

Certainly.

2287. *Lord Steward.*] But granting that the appointment of registrar was made removable on cause assigned, do you think that that would be a convenient tenure for the office of bishop's secretary?

No; I think that the office of bishop's secretary should be tenable during pleasure.

2288. Therefore the altering of the registrar's position would not remove your objection to the tenure of the two offices together?

No, I think the two offices should be distinct.

2289. In the event of the registrar holding his office, upon removal upon cause assigned, there would be nothing to prevent the bishop, if he pleased, appointing him his secretary?

Not at all.

2290. He would hold the two offices; one removable upon cause assigned, and the other during pleasure?

Quite so.

2291. But you think the two offices should be kept distinct?

I do.

2292. Lord *Winmarleigh.*] From what source does the remuneration of the bishop's secretary arise?

It arises from fees.

2293. From what fees?

From various sources; licenses, institutions, presentments, and so on.

2294. In the case of the diocese of Chester, would those fees of themselves afford an adequate income to the bishop's secretary?

I think they would. It has not been usual at Chester for the same man, or the same firm, to hold the office of registrar and bishop's secretary, although it is now the case.

2295. From

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2295. From your knowledge of other bishoprics, should you say that the fees of the dioceses generally which fall to the bishops' secretaries would of themselves be sufficient to form their income?
It would depend very much upon the diocese. I should think in the smaller dioceses the fees would not be sufficient to enable the secretary to devote anything like his whole time to the office.

2296. Is it necessary that the secretary should give his whole time to the office?
It is necessary that our secretary should, but he is the registrar too.

2297. Lord *Hatherley*.] Does a firm ever perform the office of secretary?
Yes.

2298. Is it not necessarily a person?
It is not.

2299. *Chairman*.] Is Mr. Gamon also registrar of the archdeaconries?
The archdeacons with us never h ve any registrars; they never have had any proper jurisdiction.

2300. The chancellor, in fact, in the name of the bishop, performs all the duties of archdeacon?
The chancellor performs all the legal and judicial duties discharged by the archdeacons in other dioceses; he always has done so.

2301. That is the case in some of the Welsh dioceses, is it not?
I think it is so also in the case of the diocese of Carlisle.

2302. So that there is no registrar of the archdeaconries?
No; the archdeacons have no officers of their own; the registrar does for them what is required.

2303. Earl *Nelson*.] But that does not interfere with their holding visitations?
No; the archdeacons hold visitations regularly.

2304 I think your Archdeacon Johnson gave evidence upon the last occasion that he very often held what he called a court in different parishes where presentments were made to the archdeacon, and took oaths?
That is with regard to visitation; the archdeacons hold no courts except for the admission of churchwardens.

2305. I do not know whether it was a court, but Archdeacon Johnson stated that there was a power for the archdeacon to hold a court or commission in various parishes when presentments were made, and power to take oaths at those inquiries, which he hoped would not be removed; do you know in what relation that court stands to the court which you have told us you hold as chancellor?
I should imagine that if the archdeacon held a court there would be an appeal from that court to the chancellor.

2306. But apart from the visitation, would you call this attendance at parishes when presentments are made, and the receiving of evidence, a court?
I should not have called it a court, but it probably may have the character of a court.

2307. But you know that does exist?
I know that such a thing has taken place.

2308. *Chairman*.] I did not quite understand your statement that the archdeacons have no jurisdiction in your diocese?
The archdeacons never have had any regular and formal jurisdiction.

2309. I do not quite understand how that is consistent with their holding visitations and admitting churchwardens?
It is stated broadly in the law books and the old records of the diocese, that they have no jurisdiction; but it will perhaps be more correct to say that they have no coercive jurisdiction except for the admission of churchwardens.

2310. But they have jurisdiction for the admission of churchwardens?
The archdeacons have jurisdiction for the admission of churchwardens.

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2311. You are probably aware that in other dioceses there are very often parishes which are not subject to the archdeacons, but subject directly to the bishop and his commissary?
I am not aware of that.

2312. In London, for example?
I am not aware of that.

2313. Viscount *Halifax.*] You would rather say, would you not, that the archdeacons exercise no jurisdiction, instead of having none; would not that be more accurate?
Perhaps so; but it is broadly stated in the old records and the law books that they have no jurisdiction. In fact, to take Bishop Gastrell's "Notitia," which contains a very important statement as regards the diocese, he says that the whole of the ecclesiastical jurisdiction is exercised by the chancellor.

2314. Earl *Nelson.*] Has your attention been drawn to the 40th Clause of the Bill, with reference to the rules and orders?
Yes; the impression which that clause conveyed to my mind was, that the archdeacons would not be, under the operation of this clause, diocesan officers, but would really be the officers of this meeting of vicars general and registrars, to be held in London once a year, and it seemed to me to be a false position to place the archdeacons in.

2315. Sub-section 1 appears to give the controlling body control over the archdeacon?
Yes, it does.

2316. Have you noticed Section 2, for ensuring the proper custody of records?
I have.

2317. Do you think that that would give any power for the transference of records out of the diocese altogether?
Yes, I think it might; it gives this meeting in London power to make regulations without limit, as regards the proper custody of records and papers.

2318. *Chairman.*] Where are your records kept now?
In the registry at Chester.

2319. Is that building a public or a private building?
I believe, strictly, the building belongs to the bishop. I have seen the private memoranda of the receipts and expenses of Bishop Bridgeman, and I observed that he received 2*s.* 6*d.* a year for the rent of the room; I think now it is the property of the Ecclesiastical Commissioners, because the property of the See of Chester has been conveyed to them.

2320. It is not within the cathedral precincts?
No, it is in the gateway of the old abbey.

2321. Lord *Winmarleigh.*] Is the rent paid now?
No, the rent has not been paid for a long time; I never heard of its being paid in my time.

2322. *Chairman.*] Is that the place where the business is done, or where the records are kept after a certain time?
The registrar's clerks sit there and do their business there.

2323. Is there anything further which you would like to mention to the Committee?
Certainly, there are one or two things which I would very much like to mention. One of the points which I was very anxious to bring especially before your Grace relates to the remuneration of the surrogates; I do most respectfully beg leave to protest against the reducing of my surrogates' fees; the operation of Clause 36 would be that it would take from the clergy of the diocese of Chester about 500*l.* a year, without any benefit to any one.

2324. Not even to the persons who pay the fees?
There would not be a single one more license taken out; and I am given to understand that you propose to raise the total charge for marriage licenses to a scale higher than that which we now adopt.

2325. Upon

2325. Upon what do you ground that statement?
It was stated at the meeting of the registrars that the charge in future was to be 2 *l.* 2 *s.* 6 *d.* for a marriage license.

2326. Is that in the Bill?
No, it is not in the Bill, but our charge is 2 *l.*, and of that 10 *s.* goes to the surrogate.

2327. In Liverpool would the fees be 2 *l.*?
Yes, they would.

2328. Do you happen to know what the fee is at Manchester?
It is nearly the same. I am not quite certain whether it is the same or not, but the diocese of Manchester was taken from the diocese of Chester, and the arrangements are very similar in most respects.

2329. We understand, although it is not in evidence before us, that a fee of 5 *s.* is paid to the surrogate in Manchester; it is in evidence that it is 2 *s.* 6 *d.* in London?
The total charge in London is 2 *l.* 2 *s.* 6 *d.*

2330. But the surrogate's payment is 2 *s.* 6 *d.*?
I very much object to taking this money away from the clergy.

2331. Earl *Nelson.*] And you do not think that reducing the payment to the surrogates from 10 *s.* to 5 *s.* would increase the number of marriage licenses in such a way as to recoup them?
I do not think we should have one more license taken out.

2332. *Chairman.*] The surrogate has now 10 *s.* in Chester, has he not?
He has now 10 *s.* in Chester, and I do not think it is anything too much for the responsibility and trouble. The surrogate has to take the affidavit and to make his inquiries, and then he has to send to Chester, and then send on the license to the person who wants it.

2333. But you would not contend for a higher fee for the surrogate in Chester than what is received in Manchester or London?
I do not wish to compare the surrogates' fees in one place with the fees in another; but I am very decidedly of opinion that 10 *s.* is not too much for a surrogate, and I know the importance to our poor clergy of this 10 *s.*

2334. Earl *Nelson.*] Then I understand that although you give 10 *s.* to the surrogate, the charge for a marriage license in Chester is only 2 *l.*, as against 2 *l.* 2 *s.* 6 *d.* in London?
Yes.

2335. Will you tell the Committee what the rest of the 2 *l.* goes for?
Twelve and sixpence is the Government stamp; 6 *s.* 8 *d.* for the chancellor, and the rest goes to the registrar.

2336. How much would the rest be?
It would make up to 2 *l.*; it would be 10 *s.* 10 *d.*

2237. *Chairman.*] What is the charge in Liverpool for a marriage license without the stamp?
The charge would be 1 *l.* 7 *s.* 6 *d.*, and the stamp would be 12 *s.* 6 *d.*, that is 2 *l.* altogether.

2338. Earl *Nelson.*] The Government stamp being common to both charges, the extra money is a question of the division of fees between the chancellor, the surrogate, and the registrar?
Yes, that is so.

2339. You are anxious that the marriage license should in no case be charged more than 2 *l.*, including everything?
Certainly. Our experience is very large in the diocese of Chester, and as we have had no complaint hitherto, I think it would be a pity to alter it.

2340. But you think, do you not, that it is important that the poorer clergy who hold in many dioceses the office of surrogate, should not have their fee reduced?
If you knew the terrible cases of clerical poverty that we have in the diocese of

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Chester, you would have the extremest reluctance to take 20 *l.*, 30 *l.*, or 40 *l.* a year out of those poor men's pockets. We have very populous parishes, but they are nearly all very poorly endowed parishes, and the good fortune we have of issuing 1,700 or 1,800 marriage licenses a year distributes about 500 *l.* a year amongst them.

2341. Bishop of *Ely*.] Do you find that mechanics take out those licenses to a large extent?

Yes; I think it is chiefly mechanics who take them out, and men who are engaged in the commerce of Liverpool, sailors and so on.

2342. *Chairman*.] Then, as I understand you, the fees for marriage licenses in Chester amount altogether to 2 *l.*?

Yes; that includes the stamp.

2343. And without the stamp they amount to 1 *l.* 7 *s.* 6 *d.*, of which the chancellor receives 6 *s.* 8 *d.*, the registrar 10 *s.* 10 *d.*, and the surrogate 10 *s.*?

Yes, that is so.

2344. Then it is stated in a Blue Book returned to Parliament, that in Manchester the chancellor receives 6 *s.* 8*d.*, the registrar 10 *s.* 10 *d.*, and the surrogate 5 *s.*?

I was not aware of that.

2345. That ought to make the whole charge cheaper in Manchester?

It ought to make it 5 *s.* cheaper; I should very much doubt if that is the present practice.

2346. That is the Parliamentary return?

I know the Blue Book your Grace is referring to.

2347. Would it not be possible by reducing some other fees to make up to the poor clergy for this loss?

We have already reduced every fee in the diocese of Chester that is capable of reduction.

2348. Are there any procurations and synodals?

The procurations of churchwardens cost 12 *s.* There are some trifling charges for synodals which now go to the Ecclesiastical Commissioners; they are 4 *s.* or 5 *s.*, I think; they are very small.

2349. Are they paid annually?

Triennially; the chancellor only visits every three years.

2350. Bishop of *Ely*.] Are the fees paid in your new parishes?

We have no difficulty in getting the fees.

2351. *Chairman*.] Are there any other fees pressing upon the clergy?

I think not; I am very decidedly of opinion that if this Bill in its present shape were got into operation, there would be a general raising of the fees in the diocese of Chester.

2352. What are the ordination fees?

The ordination fees are small; 2 *l.* or 3 *l.*, I think.

2353. They are probably what are prescribed by the statute?

Not necessarily. We do not charge as much as is prescribed by the statute in many cases; as your Grace is aware, the fees on the admission of churchwardens are 18 *s.*, and we only charge 12 *s.*

2354. Earl *Nelson*.] You think that the diocesan chancellor would be more likely to know what fees the clergy should pay than a central body?

I am very strongly of opinion that some organisation for a uniform scale of fees is desirable, or at any rate that a maximum of fees should be fixed. I should be very sorry to see our fees raised, because they work very well and give no dissatisfaction; they are paid, on the whole, with great readiness.

2355. You think there should be a maximum fixed, but that that maximum should not be compulsory throughout the dioceses?

Certainly not.

2356. *Chairman*.]

2356. *Chairman.*] Will you mention to the Committee any fees which are lower in your diocese than in other places?
I have just mentioned the fee upon the admission of churchwardens.

2357. That is paid, is it not?
Yes, that is paid every year; I do not think we lose above 2 per cent. of churchwardens' fees through the diocese.

2358. You do not think it would be desirable to bring that fee down to 5 *s.*?
No; I think you would be throwing so much money away.

2359. Is there any other fee which is lower in Chester than elsewhere?
The facunties are lower, and I lowered the sequestration fee at once on my becoming chancellor. We sequester instantly every living when it is vacant, but we do not charge anything for the sequestration when the living is under 150 *l.*

2360. All this is done within the diocese itself?
Yes; I sequester a living as soon as it becomes vacant, and when we know it is under 150 *l.*, we do all the work for nothing.

2361. Then your opinion is, that there are no fees in the diocese of Chester pressing hardly either upon the laity or clergy?
No; we have had visitations at which the churchwardens have objected to pay the fee; and then I have just remarked, "This is part of the remuneration of the officer who makes the visitation," and as a rule it is paid at once.

2362. Bishop of *Ely.*] Do I understand that both procurations and synodals are received from all the parishes?
Yes, they are received from all the parishes without exception.

2363. By whom and when was the amount of the procurations and the synodals fixed for the new parishes?
I cannot say; I think they follow the precedent of the old parishes, but I cannot say that from my personal knowledge. We have had many new parishes created since I have known the diocese. We have, as I stated, eight or nine new parishes every year, and they are always cited and pay the same as the other parishes.

2364. Viscount *Halifax.*] How is the sum, whether procuration or synodal, fixed which the new parish is to pay?
It is fixed by custom.

2365. Is it fixed with respect to the value of the living?
Not at all; it is a very few shillings, 5 *s.* I think, every third year for procurations and synodals, and every third year there is 15 *s.* to pay for the admission of churchwardens,

2366. Bishop of *Ely.*] But in a new parish, how could any custom exist with reference to procurations and synodals?
I mean the custom of the diocese.

2367. Lord *Hatherley.*] But the procurations and synodals were fixed, as we have been told, according to a very old custom?
The diocese only dates from Henry the Eighth.

2368. But how, in a new district, can a custom grow up?
We cite them just the same as the old parishes, and charge them just the same, and the charge is almost always paid.

2369. But how do you assess them the first time?
We charge them the same sum all the way through.

2370. Viscount *Halifax.*] In that case the amount received for procurations and synodals must be increasing every year.
It does; it has increased decidedly with us during the last few years, because we have got the parishes much more regularly to attend the visitations. There is a largely increased receipt from the fees for the admission of churchwardens

2371. What becomes of the money derived from fees for procurations and synodals?
It goes to the Ecclesiastical Commissioners now; it was the bishop's property.

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2372. Bishop of *Ely.*] Who collects those fees?
The registrar.

2373. Does he collect them for the Ecclesiastical Commissioners?
That is the case now; they used to be received by the bishop, and it is only three or four years ago that the Ecclesiastical Commissioners made the bishop refund all that he had received since he had been bishop; I advised him not to pay it, but he did.

2374. Earl *Nelson.*] You stated that in the diocese of Chester you charged no fees on the sequstration of parishes under 150 *l.* a year?
Not for sequestrations.

2375. What are the institution fees for parishes below 150 *l.*?
I forget, but they are considerably less than those which are authorised by the Statute.

2376. You would consider that the fee of 5 *l.* for institution to a living of 80 *l.* a year would be a high fee?
Yes, but there is nothing like that with us; I should say about 2 *l.* or two guineas would be about the scale with us.

2377. *Chairman.*] Is there anything further that you wish to mention to the Committee?
I think that Clause 42 in the Bill does not provide for the admission of churchwardens by the Ordinary at all; it simply says, "No churchwarden shall be admitted to office, unless he produce a certificate," but there is no proper provision for the admission of churchwardens to the office by the Ordinary.

2378. It does not repeal any power which at present exists?
I do not know whether that point should not be brought out more distinctly; it seems most important to bring the churchwardens more closely into communication with the ordinary, and this looks as if the real business of admission would be done at the vestry.

2379. You think that some more distinct reference with regard to the admission of churchwardens should be introduced into the Bill?
Yes, and I think that the clause which stood in the Draft Bill, that no churchwarden shall be deemed to be in office, until he had been regularly appointed and admitted annually, was a valuable clause; I am sorry to see it has disappeared.

2380. Is there anything else which you wish to state to the Committee?
I think I have no point further to mention, but I think the Bill would bear very hardly altogether on the diocese of Chester; we cannot afford to spare a single man, or a single shilling, and the Bill would deprive us of a resident chancellor, who has always actively assisted the bishop in the administration and business of the diocese, and it would also take out of the diocese some 1,600 *l.* or 1,700 *l.* a year; therefore, I hope your Grace will not be surprised if we do not like it. I beg leave to put in in evidence a Table of Fees, authorised soon after I became Chancellor; a Table of Fees for New Parishes as usually settled by me. Also, a Memorial addressed to the Archbishops of Canterbury and York by myself and the other ecclesiastical officers of the Diocese of Chester, in July 1875, upon the subject of Ecclesiastical Fees.

Rev.
*T. E. Espin*, D.D.

29th March 1876.

## CONSISTORY COURT OF CHESTER.

### Chester Diocesan Registry.

| Fees on a Faculty and Sequestration. | Chancellor. | Registrar. | Apparitor. | Total. |
|---|---|---|---|---|
| | £. s. d. | £. s. d. | £. s. d. | £. s. d. |
| Faculty for an alteration or an addition to a church or chapel or churchyard, in cases unopposed and in which private rights are not affected - - - - - - - - - | – 10 6 | 1 10 2 | – 1 4 | 2 2 – |
| Faculty for the removal of a body, and in all other cases, that is, when Faculty opposed, or when private rights affected, as settled by Order in Council, published in the "London Gazette," 19th March 1869 - - - - | 1 1 – | 3 13 6 | – 10 6 | 5 5 – |
| Sequestration of a benefice during vacancy - | – 6 8 | 1 15 4 | - - | 2 2 – |

*N.B.*—There is also a Stamp Duty of 10 *s.* payable on each Faculty.

By order and with consent of officers of the court.

Dated the 26th February 1874.

*Thomas E. Espin*, D.D., Chancellor.

Approved,
*William Chester.*

Registered in the Diocesan Registry, Chester,
the 26th day of February 1874.

*Chas. J. R. Parry,*
*John Gamon,* } Registrars.

*N.B.*—No charge whatever is made for Sequestration of a Benefice under 150 *l.* in annual value.

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TABLE of Fees upon the Solemnization of Offices in the New Parish of in the County of and Diocese of Chester, fixed by the Chancellor of the Diocese, this day of 187 , in accordance with the provisions of the Act of Parliament, 6 & 7 Vict. c. 37.

| | Minister. | Clerk. |
|---|---|---|
| | £. s. d. | £. s. d. |
| Marriage by License - - - | – 10 – | – 2 6 |
| „ by Banns - - - - | – 4 – | – 1 – |
| Publication of Banns - - - | – 1 – | – – 6 |
| Churching, no Fee - - - - | — | — |
| Burial in Churchyard - - - | – 2 – | – 1 – |

Rev. *T. E. Espin*, B.D.

29th March 1876.

To the Right Honourable and Most Reverend the LORD ARCHBISHOP of CANTERBURY and the LORD ARCHBISHOP of YORK.

The MEMORIAL of the Ecclesiastical Officials of the Diocese of Chester.

May it please your Graces,

YOUR Memorialists have lately observed statements and comments in the public journals, by which it is made to appear that diocesan officials are not only very much overpaid, but that their several offices are more or less sinecures, maintained principally at the expense of the parochial clergy. And these statements and comments have received a measure of colour and support from the provisions of the Bill for the Re-distribution of Ecclesiastical Fees, presented to the House of Lords by your Grace the Lord Archbishop of Canterbury, and the statements of your Grace the Lord Archbishop of York, on the second reading of this Bill.

Your Memorialists humbly represent that the duties of the several officials in the diocese of Chester are important and onerous, and the fulfilment of them requires much time, study, skill, and experience, and entails considerable expenses. And that the amount of gratuitous work willingly undertaken by the officials, at the request of the diocesan, and for the convenience of the clergy, churchwardens, and other promoters of Church work and extension in the diocese, is neither small nor unimportant.

That the total amount of the emoluments derived from official fees in the said diocese, is not in excess of what will upon inquiry be considered fair remuneration to the officials for their services.

That the Government stamp duty paid by the clergy on their appointments is of no less an amount in the aggregate than one-third of the total amount of all fees paid personally by them, and this has been by many erroneously reckoned as part of the fees of the officials.

That your Memorialists desire to assist in any re-adjustment of fees, which upon due inquiry shall be found to remove any hardship to the clergy, and they would suggest that the payment of all fees should be made to a common fund, out of which the salaries of the several officials may be assigned.

And your Memorialists beg leave to represent that they and those who have like offices elsewhere, are the nominees and officers of the bishop who appointed them to their functions, and that they have therefore a special claim upon the attention and consideration of your Graces.

And your Memorialists pray that no measure may be sanctioned by your Graces until proper opportunity has been allowed to them for stating their own case, so that the emoluments of their offices (present or future) may not be dealt with without an adequate consideration of the services rendered, and the time, expense, and professional knowledge required in carrying out the duties of these offices.

*T. E. Espin*, Chancellor.
*J. Jones*, Archdeacon of Liverpool.
*Edward R. Johnson*, Archdeacon of Chester.
*Parry & Gamon*, Registrars and Secretaries to the Bishop.
*Charles Townshend*, Apparitor.

Chester, 8 July 1875.

The Witness is directed to withdraw.

The Reverend JAMES HENRY NOWERS, is called in; and Examined, as follows:

Rev. *J. H. Nowers.*

2381. *Chairman.*] YOU are Rector of Yelling, in Huntingdonshire, I believe? I am.

2382. How long have you held that living?
I have held that living for 12 months exactly.

2383. The living is not of great value?
No; the gross value is 350 *l.*, and the net value is 240 *l.* and a house.

2384. Is that from the amount of the rates that it is so much diminished?
From the rates and other charges connected with it; chiefly by rates and the payment

payment to Queen's Anne's Bounty, and there are various other expenses which are annual charges upon the living, which reduce it to the amount I have said.

2385. With regard to the payment to Queen Anne's Bounty, is that in the nature of a loan?
It is a loan upon the house.

2386. That will of course expire in time?
It will expire in about seven or eight years. There is also another loan contracted for draining the land belonging to the rectory, and that will have to run on for 25 years to come.

2387. So that until those loans are paid off the income is very much diminished; in fact, it is only 249 *l.* a year?
That is so.

2388. As compared with 350 *l.* the gross value?
Yes.

2389. Which is 110 *l.* taken off?
Yes. The land tax, amounting to 10 *l.* a year, is one charge that will be perpetual.

2390. Who is the patron of the living?
The Lord Chancellor.

2391. When were you instituted to that living?
I was instituted to that living 12 months last February.

2392. And the institution, of course, was a very expensive one?
A most expensive matter.

2393. Could you state to the Committee what it cost you to be instituted to this living?
Yes, I can.

2394. Have you looked into the account so as to know how much went to the Government?
Yes, I have it all here.

2395. Will you kindly state to the Committee what amount went to the Government?
£. 14 was paid to the Presentation Office in stamps and fees.

2396. Do you know how much was in stamps?
The *ad valorem* stamp was 5 *l.*; the fee duty to be paid by means of the stamps in lieu of the fees hitherto payable in money, amounted to 8 *l.*

2397. From whom is that letter?
That is from the Lord Chancellor's secretary, Mr. Robert White; I think he is the legal secretary.

2398. In the first place, there is the stamp for the Chancellor of the Exchequer?
Yes, that amounts to 5 *l.*

2399. That is a reduced stamp, is it not?
This stamp bears date 26th January 1875. I do not know anything more than that.

2400. And therefore is less than it was in former years?
I presume it may be so, but I am not aware how that is.

2401. Then there is how much to the Lord Chancellor?
The fee amounts to 8 *l.*

2402. To whom is that payable?
The paper demanding it says only, "The fee duty to be paid by means of stamps in lieu of the fees hitherto payable in money."

2403. Those are not ecclesiastical fees, are they?
I am not prepared to say.

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2404. The gentleman is not an ecclesiastic or a bishop's officer who writes to you?
The gentleman who writes me is a William Robert White, of the Presentation Office, Chancery-lane; he is a solicitor.

2405. Will you state the rest of the expenses connected with your institution?
The expense of the parchment and the engrossing was 5*s.*, docket stamp, 2*s.*, box for holding Great Seal, 1*s.* 6*d.*; then in addition to that there is written, "Should you not know anyone in town to entrust these duties to, I could get them done at a small expense; that is to say, give your bankers' draft for 14 *l.*, and the balance will cover the difference of the charges," so it was 13 *l.* 8*s.* 6*d.*, and 11*s.* 6*d.* in addition for getting the work done for me in London.

2406. Those fees were in consequence of your being presented by the Lord Chancellor for getting the Great Seal?
Yes, they were.

2407. And your document is sealed with the Great Seal, is it not?
Yes, it is.

2408. Had you been presented by a private patron, would those charges have been made?
Not the presentation charges, I think; that is in the case of a presentation by the Lord Chancellor only.

2409. Only an episcopal patron?
I could not say; I have never had the honour of being presented to a living by a bishop.

2410. Bishop of *Ely.*] Those are not ecclesiastical fees, I believe?
No, those are presentation fees.

2411. *Chairman.*] Have you looked at the Bill to see whether it touches those fees?
No, I have not looked at the Bill to see that. The entire sum is exactly 14 *l.* which I paid to the Presentation Office.

2412. Now besides the fees to the Presentation Office, you paid the bishop's secretary a certain sum, did you not?
I paid the bishop's secretary fees for institution amounting to 7 *l.* 17*s.*

2413. Have you the items of that amount?
I have.

2414. Will you give the Committee the items?
The fees paid to the vicar general or chancellor amounted to 16*s.* 8*d.*; the registrar's fee was 2 *l.* 2*s.* 4*d.*; the secretary's fee was 4 *l.* 4*s.*; the apparitor, 3*s.* 6*d.*; sealer, 4*s.* 6*d.*; record keeper, 2*s.* 6*d.*; parchment and petty expenses, 3*s.* 6*d.*, making a total of 7 *l.* 17*s.*

2415. Do you happen to know whether those are the fees chargeable under the Statute?
Yes, they are.

2416. Have you looked at the Statute to see if the fees exactly correspond?
No; it says, "For institution as settled by Order in Council, Gazetted 24th July 1857."

2417. Then when they are said to be fees to the bishop's secretary, he has the collecting of those fees for other persons, has he not?
It appears that 4 *l.* 4*s.* goes to the bishop's secretary, and the remaining portion of the money to other individuals.

2418. As far as I understand, you were charged under the Table which was issued by an Order in Council on the 24th July 1857; have you ascertained whether the subsequent Order in Council made any alteration in the fees?
I have not.

2419. I think you will find that it did not?
I presume that this would be correct, coming from the bishop's secretary.

2420. But

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2420. But looking at the fees in that order, have you added them up? there seems to be some fee there which is not in the Order. We understand that the fees according to the Statute amount to 7 *l.* 13 *s.* 6 *d.*, and that you were charged 3 *s.* 6 *d.* additional for parchment, and 3 *s.* for other charges; is that so?

No; I paid 3 *s.* 6 *d.* additional altogether.

2421. Those additional charges beyond the statutory charges amount to 3 *s.* 6 *d.*, do they not?

The charges amount to 3 *s.* 6 *d.* for parchment and petty expenses.

2422. In your opinion is that a reasonable charge?

I should imagine so; the 3 *s.* 6 *d.* is very small of itself; that is not the sting.

2423. The bishop's secretary receiving this money appears to have acted under statutory authority in receiving money for other people, besides the 4 *l.* 4 *s.* for himself.

I presume that to have been so.

2424. Now the next charge to which you were subjected was one to the registrar?

There were two charges to two separate registrars, one for Huntingdon and another for Ely.

2425. How did you happen to have to pay two registrars?

One of the payments was illegal.

2426. Did you pay the money?

Unfortunately, the churchwarden paid it before I came into the parish. He gave me one registrar's receipt, and I paid the other.

2427. For what are those payments to the registrar?

If your Grace will allow me, I will read the statement. This is to the registrar of Huntingdon, "Instructions for and preparation of sequestration bond on the death of the late rector, 1 *l.*"

2428. This was sent to you before you entered upon your duties?

Yes, this was sent to me before I entered upon my duties at all.

2429. This is a payment from the income of the living before you became incumbent; it is a charge upon the living at the time you were not incumbent?

Yes, soon after the death of the late rector.

2430. It is a charge, is it not, upon the living during the vacancy?

It is a charge upon the living which I, when instituted, had to pay.

2431. But still it is a charge upon the living during the vacancy?

It is.

2432. Have you any idea what the object of that charge is?

Not the slightest.

2433. You do not know what the charge is for?

They call it charges for sequestration.

2434. Why was the living sequestered?

I cannot understand at all why it should be, except to get money out of our pockets.

2435. Does anyone perform the duties of the living during the vacancy?

During the vacancy, the churchwarden is responsible for providing some one to take the duty, and charges the incumbent, when instituted, with that amount.

2436. Who has the right, during the vacancy, to collect any dues which are payable to the incumbent?

I presume that no one has; no one can collect until the new incumbent comes in; it is done as a protection, I suppose, to prevent any one coming in and taking the fees, or anything else.

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2437. Are you aware that during the vacancy of a living, it is for the protection of the property that the living is sequestered, and that the sequestrator alone is entitled to collect any revenues belonging to the living?
I am not at all aware that that is the case. I think it is done for the protection of the living, but I do not think the sequestrator has any right to collect anything.

2438. Would anyone else have the right?
No one at all.

2439. From whom did you receive the accumulations?
On being instituted to the living, when the tithe rentcharge became due I collected it in the usual way, and then paid to my predecessor's representative the amount due up to the time of his decease.

2440. Suppose the date when the payment fell due occurred before you were instituted, who would have received the tithes?
I am not prepared to say.

2441. Would it not have been the sequestrator?
He must have done it in that case, but that is a very rare instance indeed.

2442. Is not it the duty of the sequestrator to collect all the dues of the living during the vacancy?
I do not know.

2443. That is sequestration, is it not?
I do not know.

2444. Did the registrar send in his list of charges?
He did.

2445. Will you read that list?
"Instructions for and preparing sequestration bond on the death of the late rector, 1 *l.*; stamp and paper, 6 *s.* 4 *d.*; letter to churchwardens requesting them to call and execute bond, 3 *s.* 6 *d.*; attending them on their executing same, 6 *s.* 8 *d.*; preparing sequestration mandate, 5 *s.*; preparing relaxation of mandate, 5 *s.*; fees on your induction, 2 *l.* 10 *s.*; letter to you with papers and your reply as to induction, 3 *s.* 6 *d.*" Total 5 *l.* To this I objected, because the charges were very much higher than I had been subjected to on a previous occasion in the diocese of Lincoln, and I got off 6 *s.* 8 *d.*, leaving 4 *l.* 13 *s.* 4 *d.*

2446. Are any of those items which you have read fees, or are they attorney's charges?
This registrar is an attorney, but he is the registrar of the diocese.

2447. But are there any fees there which are authorised by the Statute?
I do not know anything about that. All I know is, that I have had to pay it.

2448. But this is a bill from an attorney?
This is a bill from the Registrar of Huntingdon.

2449. But he is an attorney. The sum of 6 *s.* 8 *d.* occurs several times. Is that a fee?
He charges first for writing to the churchwardens to come to him, and he charges 6 *s.* 8 *d.* when they do come to him; and then he says, "Preparing sequestration mandate, 5 *s.*, and relaxation of mandate, again 5 *s.*"

2450. Will you give me the fees again?
The fees upon induction amount to 2 *l.* 10 *s.*

2451. That is probably the fee authorised by the Statute?
I do not know that; he says, "For preparing sequestration bond."

2452. Is that authorised by the Statute?
I do not know; I suppose it was.

2453. *Lord Steward.*] Whether authorised by the Statute or not, that bill was sent to you by the registrar, and you felt bound to pay it?
Yes;

Yes; I was compelled to pay it. In diminution of this, I got 6 *s.* 8 *d.* off, and I paid him 4 *l.* 13 *s.* 4 *d.*

2454. *Chairman.*] Is that the Registrar of Huntingdon's account that you have just read?
Yes, it is.

2455. Will you state which of those fees you object to in particular, which you think illegal charges?
I do not know whether this registrar's charge is the illegal one, or the charge made by the Registrar of Ely.

2456. We will confine ourselves to the Registrar of Huntingdon. I want to know, from the document you have in your hand, which of the fees charged by the Registrar of Huntingdon appear to you to be improper charges?
That depends upon another question entirely. It depends entirely upon this, Which of the two registrars have the right to claim the fee, but that I am not able to say. They have been quarrelling now for 12 months about it, and it has not yet been decided by the chancellor of the diocese, and I have not had my guinea returned.

2457. Do you object to any one of those fees of the Registrar of Huntingdon as being illegal fees?
The Registrar of Huntingdon told me himself that one of the bills was illegal.

2458. But I mean, looking at the Registrar of Huntingdon's charge, which do you object to in that?
I object to one charge for the sequestration, because here is a second sequestration charge in the other account.

2459. Then, in fact, you do not know anything about whether the first charge is legal or illegal?
I know that one is illegal, because two registrars cannot possibly claim the same fee.

2460. The Registrar of Ely has sent you in another bill, has he not?
He has.

2461. Will you read that?
"Received, on the 1st January 1875, of Mr. William Woods, churchwarden, the sum of 1 *l.* 1 *s.* 6 *d.* for fees on sequestration during the vacancy of the Yelling rectory." One registrar charges 1 *l.*, and the other 1 *l.* 1 *s.* 6 *d.*

2462. How do you account for one registrar charging 1 *l.* 1 *s.* 6 *d.*, and the other 4 *l.* 13 *s.* 4 *d.*?
I do not know. This is an enormous bill of Mr. Margetts', the Chancellor of Huntingdon.

2463. Have you paid the money?
I was forced to pay it, or I should have been threatened with a process.

2464. Would it not have been worth your while to dispute it?
No; if poor men get into law, we do not know where we are.

2465. Lord *Winmarleigh.*] I did not know you were subjected to a fee on sequestration simply?
I suppose we are bound to pay it when we are sequestrated, but not to pay it twice over, or to have two charges made.

2466. Supposing the tithes, as have been suggested by his Grace in the Chair, became payable during the vacancy, who do you suggest should be authorised to collect those tithes?
No living is vacated more than six months, because, if it is not filled up by the patron in that time, it is filled up by the bishop; therefore, the case suggested by his Grace could not occur.

2467. Might there not be six months in which the whole income of the parish might be in danger?
That might be so.

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2468. Do you not think precautions should be taken against that danger?
It might be necessary, but it would be very rarely likely that it would occur.

2469. *Lord Steward.*] If nobody was authorised to give a receipt for the tithe rentcharge, nobody would pay them?
Certainly not.

2470. If the living had not been sequestered, you would not have been injured?
Certainly not.

2471. You would have had ample time to recover your tithe by process of law?
Yes.

2472. And if anybody had refused to pay the tithe, you could have demanded it?
Yes, certainly.

2473. Lord *Winmarleigh.*] Supposing a tenant had left the parish?
Then you could follow for the tithe. You can go on to the land.

2474. *Chairman.*] Would that apply to all sequestrations under the Act of Parliament, in which the bishop is authorised to sequester a living?
I do not know about that.

2475. Lord *Hatherley.*] Did the sequestrator receive any tithes?
No.

2476. *Lord Steward.*] Did you ever hear of a receiver receiving tithes when a living was vacant.
Never.

2477. Bishop of *Gloucester and Bristol.*] Out of what fund did the churchwarden pay those fees before you arrived?
The churchwarden paid them out of his own pocket, and being a sort of legal document he was afraid of getting into trouble if he did not pay it immediately.

2478. *Chairman.*] Comparing the charges of these two registrars, do you suppose that each of them professes to have done the same work?
I should presume not, because in this long bill Mr. Margetts charges 2 *l.* 10 *s.* as fees on my induction, and letter to me on the same subject, 3 *s.* 6 *d.*, that makes 2 *l.* 13 *s.* 6 *d.*

2479. Have you any reason to know whether those are legal fees on induction?
I have no means of knowing.

2480. Did you apply to any person in authority to ascertain whether these were legal fees or not?
No; I took the liberty of writing to the Bishop of Ely about the charges which were made, but his Lordship did not make any remark upon them.

2481. Do those gentlemen profess to have done the whole work for you?
In one case; I have never seen the Registrar of Ely.

2482. Did you inquire of him?
No, I have done nothing; I could only apply to Mr. Margetts for the return of 1 *l.* 1 *s.*, and he said, "If it is decided that I am in error I will return you my charge, and if the other registrar is in error he must return it;" I have been writing two or three times for it, but I have never been able to get my 1 *l.* 1 *s.* back.

2483. *Lord Steward.*] Do you complain of the fees being illegal, or that they are oppressive?
I complain that the fees are oppressive, and in one case I complain they are illegal, as being charged twice over.

2484. Then no satisfactory explanation has been given to you, why two registrars should each claim the privilege of charging you fees?

No;

No; Mr. Margetts, the Registrar of Huntingdon, said there was a dispute being carried on between himself and the Registrar of Ely, and that until that was decided, they would both try to get the fees as long as they could.

2485. And, unfortunately, you had no control over the paying, because it was paid before you arrived?
Yes.

2486. The difficulty was to get the money back again?
Yes, quite so.

2487. *Chairman.*] Now you have stated that you also have to pay first fruits to Queen Anne's Bounty, amounting to 14 *l.* 17 *s.* 11 *d.*?
That is correct.

2488. That, you are aware, does not come under this Bill in any way?
I am afraid not, although it is excessively oppressive.

2489. Do you know to whom that money goes?
To the Governors of Queen Anne's Bounty, I presume.

2490. For what object is that money paid?
Professedly, I suppose, for the object of increasing small livings.

2491. And you think that your living is one of those small livings which might be spared paying that?
Yes; my living is so small that I had only 8 *l.* 6 *s.* to subsist upon for six months, after deducting what I paid for fixtures.

2492. And besides that you had to pay tenths?
Yes; and I wish to call the attention of the Committee to that. It seems to be a most cruel charge; for instance, my predecessor died upon the 7th December 1874, and I was instituted to the living in February 1875, so that I had the proceeds of the living for three weeks during 1874; and though I had only held the living three weeks, I was compelled to pay the whole of the tenths for that year, which seemed to me to be most unjust.

2493. You think it would be better that the out-going incumbent, or his family, should pay a proportionate part of the tenths?
Unquestionably that is the honest way of doing it.

2494. The question is which is the one commanded by law.
I did not know that there was any law upon the subject.

2495. The one that is commanded by law must be honest; do not you think so?
I do not think so.

2496. Are you aware that this applies in all cases?
I can only speak to my individual experience.

2497. Everyone who succeeds to a living at the unfortunate moment when the first fruits and tenths are due, has to pay them; but you think that is a bad arrangement?
It is an exceedingly bad arrangement in a small living like mine, where in the first year I got only about 100 *l.*, and had to pay 14 *l.* 17 *s.* 11 *d.* for the Queen Anne's Bounty.

2498. You think it would be better that the widow of the late incumbent should have paid a portion of that?
I think there should not be any such charge as this on so small a living; I think that small livings should be excused those charges.

2499. You think those charges upon small livings like yours should be estimated not according to their value in the time of Henry VII., but according to their value now?
Yes.

2500. Now, you next had to pay the half-year's tenths to the Bishop of Ely; do you know anything about that?
No; I know there is a demand made twice a year for this 7 *s.* 8 *d.*, from some office in London.

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2501. Is that from the Ecclesiastical Commissioners.
No. I only have a few of the chief receipts here; I have not that, or I could refer to it.

2502. I think it must be from the Ecclesiastical Commissioners, because the Bishop of Ely's payments are regulated by Statute, and all additional fees go to the Ecclesiastical Commissioners; but, at all events, you think you ought not to pay 7 *s.* 8 *d.* to anybody.
I do not object to paying 7 *s.* 8 *d.*; but I only put that as one of the charges upon the living.

2503. We have pretty nearly exhausted the fees on your institution. The next thing is the land-tax; that has nothing whatever to do with ecclesiastical fees; but that is a heavy charge, is it not?
Yes.

2504. That is 5 *l.* 3 *s.* 9 *d.*?
Yes, and that, I should remark, is a half-yearly tax; it is 10 *l.* 7 *s.* 6 *d.* annually.

2505. Have you much glebe?
I have 34 acres of glebe.

2506. Earl *Nelson.*] You had to pay that at the time when it became due?
Half-yearly, when it became due; all those charges that I have read out to you were charges made upon the living during the first six months.

2507. Then having finished with the exchequer, and the bishop's officers at your institution, did you then fall into the hands of the surveyors for dilapidations?
Yes, I did.

2508. And how much did you have to pay the surveyor?
Under the Dilapidations Act I had to pay the surveyor 6 *l.* 7 *s.*

2509. Is there any statement of that charge?
Yes, I think that is in itself perhaps not exorbitant.

2510. Was the house in a great state of dilapidation?
The surveyor had to make a journey specially to inspect the premises, and then to go over them carefully and make an estimate of the actual amount that might be required for putting the house in order. I do not think this charge is exorbitant at all.

2511. What amount of dilapidations did you receive?
£. 70 5 *s.*

2512. And you had to pay 6 *l.* 7 *s.* for the surveyor?
Yes.

2513. And then the bishop's secretary 3 *l.* 12 *s.*?
Yes, that is an extra charge.

2514. Was any statement given you, showing upon what authority that was charged?
Not at all. I have it here: "Ecclesiastical Dilapidations. Benefice of Yelling. The fees due from you for proceedings taken under the 'Ecclesiastical Dilapidations Act, 1871,' are as follows: Surveyor, 6 *l.* 7 *s.*; secretary, 3 *l.* 12 *s.*, registrar, 15 *s.* 4 *d.*; 10 *l.* 14 *s.* 4 *d.*; for which amount I shall be obliged by the receipt of a cheque crossed 'Coutts & Co.' I am, dear Sir, yours faithfully, Henry W. Lee."

2515. Have you compared that with the scale of fees fixed by the diocese?
No, I have not.

2516. Are you aware that there is a scale of fees fixed by the rural deans of each diocese?
I presume this is founded upon it.

2517. At all events you think it is higher than there is any necessity for it to be?

I think

I think that the fee to the bishop's secretary is enormous.

2518. Have you represented that to the rural deans who fixed the fee?
We have not had a ruri-decanal meeting. I have mentioned the matter privately.

2519. The same thing applies to the registrar, does it not?
I think the fees are fixed by the bishops, archdeacons and rural deans.

2520. You think the fee is fixed too high, as I understand?
I do.

2521. Bishop of *Ely.*] May I ask you when you paid that?
This is the only item I have not paid. I have not paid it, because the work was not completed.

2522. When was the demand made?
The demand was made on the 30th June.

2523. You were asked whether you had made any representation with reference to the excessiveness of the charges under the Dilapidations Act; have you done so?
No, I have not.

2524. Are you aware that a diocesan meeting for the re-arrangement of surveyor's fees took place in October last?
I am not aware of that.

2525. *Chairman.*] Then beyond these which are payments arising out of your induction to the living, follow poor rates, 32*l.* 0*s.* 1½*d.*, which are very high certainly upon a living of which the net value is only 240*l.*?
That is so.

2526. And that is only a half-year's poor rate?
Quite so.

2527. And then there is 13*l.* 15*s.* 9½*d.* for a half-year's payment to Queen Anne's Bounty?
Yes.

2528. That is for a loan upon the house, is it not?
Yes. Before your Grace passes on, I should like to make a remark with respect to the fees charged under the Dilapidations Act, and I can only do so by alluding to a circumstance which took place prior to my induction. Before going to Yelling I held a living at Weston near Spalding. During the time that I was there, at a cost of 1,100*l.*, with the assistance of friends and others, I built a house and paid for it entirely and also a school, and I kept the house in thorough repair, so that when I left, nothing whatever was required. Now it seems to me a very hard case that I should leave a house in perfect repair, almost a new house, which I took immense trouble to build, so that on the surveyor coming there his fee would simply be 2*l.* 2*s.*, while in my case I shall have to pay 10*l.* 14*s.* 4*d.* when the work is completed. It seems a most strange thing that I, on going into another house, which another incumbent has allowed to go into very sad disrepair, should be charged for what should fall on his representative, and should have to pay a sum of 10*l.* odd, whereas if I had only to pay for my own house at Weston I should have been only charged for the surveyor coming to look at it; at the same time, it seems to me that the incumbent, or his representative, should pay the amount entirely; as they pay for the dilapidations, so they should pay the expenses consequent upon the examination which they had rendered necessary.

2529. You mean that you have had to pay the surveyor for surveying the house for another person?
Quite so; I have to pay 10*l.* 14*s.* 4*d.*, whereas if a different system had been adopted, I should only have had to pay 2*l.* 2*s.* to the surveyor in Lincoln.

2530. In the diocese of Lincoln the out-going incumbent pays the surveyor, and in the diocese of Ely the in-coming incumbent pays the surveyor: is that the case?
No, that is not the case.

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2531. Earl *Nelson.*] You were comparing the case of a person who left a house in perfect order when the fee could only have been the fee for the surveyor coming to look at the house, and the case of a house in bad order where a surveyor had to spend a great deal more time, and therefore to charge a great deal more money?

Yes, and the bishop's secretary also comes in.

2532. Lord *Winmarleigh.*] Do you happen to know what the surveyor charged to the executors of your predecessor?

He did not charge anything to the executors, I presume; it all fell on me; that is what I complain of.

2533. You think you had to pay the whole expenses?

I know I had to pay the whole expenses.

2534. *Chairman.*] Then you have had various payments to make, such as the half year's poor rate, the payment to Queen Anne's Bounty, the Land Improvement Loan, 6 *l.* 7 *s.* 8 *d.*; those are the sums, I think, which reduce the living from 350 *l.* to 240 *l.*, are they not?

Yes, they are, in the aggregate.

2535. So that we must either consider the living as 350 *l.*, subject to those charges, or consider it as 240 *l.* without these sums charged?

Yes.

2536. Then there is the income tax on house and a half year's fee-farm rent; what is that?

I do not know that; it is some lawyer in London that I have to pay it to.

2537. Then there is a payment for fixtures?

That you must expect to have.

2538. Then you state that the actual income left you after all, was 8 *l.* odd for that half year?

Yes.

2539. Earl *Nelson.*] What is the total of all your payments?

One hundred and fourteen pounds five shillings and seven pence.

2540. From whatever sources you had to pay that?

Yes, within the first half year I should guard myself with respect to this one payment to the surveyor; it has been demanded twice, but I have refused to pay it because the work was not completed.

2541. *Chairman.*] What were you entitled to receive for that half year?

The total amount that I received was 145 *l.* 16 *s.* 7 *d.*, corn rentcharge; half year's rent of glebe, 24 *l.* 16 *s.* 6 *d.*, half year's fees, 1 *l.* 11 *s.* 6 *d.*

2542. But you have put your income for the half year at 57 *l.*?

That was after deducting the 114 *l.* 5 *s.* 7 *d.*

2543. Bishop of *Ely.*] Did you receive the accumulations during the vacancy?

Yes, I received the accumulations from the time of the decease of my predecessor; I took the exact amount for the first six months.

2544. *Chairman.*] Is there money due to you at the end of this half year from the living; the tithes are in arrear, I presume?

At the expiration of every six months you collect the tithe.

2545. Supposing that on the 1st of January you were collecting your tithe, up to what time are the tithes paid?

The tithes are not paid in advance, they are always paid in arrear. For instance, the tithes fall due upon the 25th of March and the 25th September.

2546. So that by the 1st of January you have received the tithes which are due up to the 25th of September?

No, you receive the tithes immediately after they become due, as soon as you can get them.

2547. So that if you died upon the 1st of January, you would be entitled to no arrears of tithes?

Yes, certainly, from the 25th September; but everything ceases at the moment of your decease.

2548. To whom would the arrears be payable?
The arrears would be payable to the representatives of the incumbent, as, in my case, I paid them over to my predecessor's widow.

2549. Therefore you do not appear, as far as I can understand, to have received up to the time of making that return, three months' arrears?
Three months' tithes might have been in arrear when I made the statement.

2550. So that a fourth part of the 240 *l.* would be due to you?
Unquestionably, with the exception of the current expenses.

2551. So that that must be added to the 8 *l.*, must it not?
No, I beg your Grace's pardon, there was nothing whatever but that amount at the expiration of the first six months.

2552. You have not received it, but it was due to you?
I gave a statement of the actual amounts received, and the actual amounts paid; there were no arrears when this statement was made, because I drew it up when the six months had expired, though I did not forward it immediately.

2553. Is it not the case that tithes are always paid some time after they are due?
As soon as you can collect the tithes, you get them collected.

2554. Then the whole purport of your statement, which is a very natural one, is that you think the fees of one kind and another press very heavily upon small livings?
I think that they press not only very heavily but very cruelly.

2555. You think it very desirable that the fees should be remitted?
Unquestionably; it seems to me that we are paying large sums of money to the bishop's secretary and others, with little or nothing being done for it, especially under the Dilapidation Act. All the bishop's secretary has done under that, is to send me a copy of the estimate made out by the surveyor, which I had already received.

2556. Would it not be well for you to make that known to those who impose this fee; that is to say, the clergy?
I shall certainly take the opportunity to do so at the next ruri-decanal meeting.

2557. Do the churchwardens complain of the fees they have to pay?
They have no means of paying; we have no funds whatever.

2558. How is the church kept in repair?
That is a difficult question to answer. We have no church rate; we have 2 *l.* or 3 *l.* which come in, but the expense falls chiefly on the incumbent, and the goodwill of those who assist.

2559. Why do you not impose a church rate?
It is not legal; you cannot enforce it.

2560. But you can impose it?
I am aware that you can impose it, because we used to do so in my former parish.

2561. Then you do not agree with the Chancellor of Chester?
No; indeed, I was astonished to hear what the Chancellor of Chester said.

2562. You do not think the diocese of Ely is so happily circumstanced in that respect as the diocese of Chester?
No. If you were to hear the complaints of the clergy in general you would say so.

2563. Earl *Nelson.*] You have not a resident Chancellor, I believe?
I do not know; the Bishop of Ely will tell you that.

2564. You have not seen him?
I have not; I wish I had seen him, for perhaps I could then get my guinea.

2565. *Chairman.*] You have not examined the Bill, I believe?
I have not.

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2566. Earl *Nelson.*] I want to clench what you have said. If I understood you rightly, you said that you had to pay 40 *l.*, or something like that down, out of a half-yearly sum of 125 *l.*?
Yes, before I receive a farthing; and not only that, but a half year's poor rate, amounting to 32 *l.* 0 *s.* 1½ *d.*

2567. Bishop of *Ely.*] But, on the other hand, I should like to ask you this question. It appears, does it not, that the purely ecclesiastical fees which you paid connected with getting into your living amounted to 7 *l.* 17 *s.* to the bishop's secretary, 4 *l.* 13 *s.* 4 *d.* to one registrar, and 1 *l.* 1 *s.* 6 *d.* to another registrar; that is 13 *l.* odd altogether?
Then there is the bishop's secretary again, 3 *l.* 12 *s.*, and the registrar 15 *s.* 4 *d.*

2568. That is for dilapidation; does it not appear that the only ecclesiastical fees which you had to pay for getting into your living amounted to a sum of between 13 *l.* and 14 *l.*?
Yes, those would be the ecclesiastical fees proper.

2569. *Lord Steward.*] It is no great consolation to you that fees to that amount went to the ecclesiastical offices, and that you had to make up the balance to secular persons?
Certainly not.

The Witness is directed to withdraw.

The Venerable Archdeacon GEORGE HANS HAMILTON, is called in; and Examined.

Ven. Archdeacon *G. H. Hamilton.*

2570. *Chairman.*] You are, I believe, Archdeacon of Lindisfarne?
Yes, I am.

2571. The other archdeacon in your diocese is Archdeacon Prest, I believe?
Yes.

2572. Who is the other?
Archdeacon Bland is the Archdeacon for Northumberland.

2573. Archdeacon Prest is Archdeacon of Durham, is he not?
Yes.

2574. Archdeacon Bland, and yourself, divide Northumberland between you?
That is quite correct.

2575. Do the churchwardens attend your visitations?
Universally.

2576. Are they charged any fees?
The fees used to be 15 *s.* per parish, but under the late Order in Council these were raised to 18 *s.* without any notice having been given either to the Archdeacon or to the Churchwardens, or to the Registrar. It was under the powers given by the 30th and 31st Victoria, chapter 135, that these fees were so raised. In the first instance before this alteration, the 15 *s.* was distributed as follows: 6 *s.* 6 *d.* to the Archdeacon, and 8 *s.* 6 *d.* to the Registrar; but when the alteration was made, the charge became 18 *s.*, and the Archdeacon's proportion was reduced to 2 *s.*, and the diocesan Registrar received 2 *s.*, and the Archdeacon's Registrar 14 *s.* Up to that time the churchwardens used universally (where there were any funds) to pay the fee of 15 *s.*, but now many refuse to pay the 18 *s.*

2577. You find that the late Order in Council has made it more difficult to collect the money?
Quite so.

2578. Under what Act of Parliament was that Order issued?
Under the 30th and 31st Vict. c. 135, which it is now proposed to repeal by this Bill. We had no notice whatever of the changes to which I have referred, and

and hardships have occurred under them; for instance, I myself, without any notice, lost 4 *s.* 6 *d.* per parish. This is a small thing in itself, but it might occur in other places, and the hardship prove to be greater.

2579. Have you examined the provisions of this Bill which enables certain persons to meet and consider alterations in fees?

I am instructed by a Committee of the Lower House of the Convocation of York to state to your Lordships that we do not wish our fees to be adjusted, except by Canon.

2580. Are you aware that it is laid down by a high legal authority that canons are not binding upon the laity?

The ecclesiastical officers are distinct from other laity; churchwardens are bound only by Canon, and they appear at visitations by order of the Canons.

2581. Do you think that they would pay the fees if they were bound by Canon to do so?

The Committee of the Convocation of York instructed me to lay before your Lordships, that from the earliest times, and again in 1604, all Offices Ecclesiastical, and all fees, were arranged by the Church itself, by Canon.

2582. Do you think, quite independently of ancient precedent, that the laity would be willing, whether ecclesiastical officers or not, to pay fees imposed by Convocation?

Your Grace will perceive that the statutes which impose fees to be paid by churchwardens, give no power of recovering them; and we think that the churchwardens might be induced to pay Church fees which were imposed by Church authority, rather than under a statute which directs that certain fees shall be paid, but which gives no fund out of which they are to be paid. A Statute has taken from the Church the common law right to collect church rate, and yet this Bill proposes to require the churchwardens to pay 5 *s.*, but does not give power to recover it, nor provide a fund out of which to make the payment.

2583. Your estimate of the Churchmen in the north of England is, that they would prefer to be taxed by Convocation rather than to be taxed by Parliament?

The Clergy would, and the Laity of the Church might be induced to make a voluntary payment for a Church purpose at the request of Church authority, rather than comply with a statute which requires them to make the payment, but which gives neither the power of recovering it, nor the fund out of which the payment is to be made.

2584. *Lord Steward.*] By the term "taxation," as used by his Grace, you understand the payment of fees for Church purposes?

I understood it to refer to payments from the Church Laymen, such as the fee of 5 *s.* to be paid by churchwardens.

2585. You do not suppose that if Convocation were to levy a land-tax, or anything of that sort, the laity would be willing to pay it?

Certainly not; that could not be under the Ecclesiastical Fees Bill.

2586. Then the levying of fees is not really taxation?

It seems to me to include the principle of taxation. It is a constitutional principle in this country that every class taxes itself; the House of Commons passes all money Bills, and thus the people tax themselves by their representatives; the Church may naturally wish (as she has done from time immemorial) to settle her own fees and to arrange her own officers.

2587. *Chairman.*] But churchwardens are not members of Convocation?

They are officers of the Church under Canon law, and the Canons are made by Convocation.

2588. Would you put in those resolutions which the Committee of Convocation have approved of?

[*The same are handed in, and are as follows:—*]

CONVOCATION of YORK.

COMMITTEE of LOWER HOUSE on ECCLESIASTICAL FEES and OFFICES BILL.

"At a meeting of this Committee held in the vestry of York Minster, on the 23rd day of March 1876, it was Resolved:—

"That the position of Ecclesiastical Officers and their emoluments having been regulated

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by Canon, legislation upon this subject should, in the present instance, be carried out rather by Canon than by Statute.

"That, whereas the Archdeacons have hitherto been wholly Diocesan Officers, they desire not to be rendered liable to receive orders from other Authorities.

"Part 2. Section 4. That the real and personal property dealt with under this clause should not be disposed of by those persons who are to frame the Rules and Orders.

"Section 5. That this meeting is of opinion that no material saving will be effected by uniting the offices of the Bishop's and the Archdeacons' Registrars in one person, and that it would tend greatly to convenience that they should remain distinct.

"Section 12. This Committee is of opinion that the words 'during good behaviour' should be substituted for 'during the pleasure of the Bishop,' and that the tenure of the office of Registrar should not depend on the avoidance of the See.

"Section 11. This clause should run thus,—in place of the words 'who is not, or has not been,' &c. 'who, if a barrister, shall not be less than of seven years' standing, and resident within the diocese.'

"That Section 16 be omitted.

"Section 36. That whilst the fees paid for marriage licenses are open to review, the payment to Surrogates should remain as at present.

"Section 37. That it is not desirable that Procurations and Synodals should be abolished; but if the Archdeacons are no longer to receive them, they should be vested in the Governors of Queen Anne's Bounty for the general purposes of their trust.

"Section 40. If it be intended to include Archdeacons in the application of sub-clauses 1, 3, 4, the Committee object to this arrangement, inasmuch as it would take from their Diocesan character.

"Section 50. This Committee concurs in the following objection made by the Archdeacons of the Province of Canterbury: 'The Committee entertains a strong objection to the payment of the salary of the Ecclesiastical Judge, constituted under the Public Worship Act, being defrayed from fees levied on the Parochial Clergy and Laity, no adequate proportion of the same salary being charged upon the higher Dignitaries of the Church.'

"That the Archdeacon of Lindisfarne be requested to represent the opinions of this meeting to the Select Committee of the House of Lords, if summoned to give evidence before them.

"*Frederick Watkins,* Archdeacon of York, Chairman."

2589. Will you read the first of those resolutions by itself?

"That the position of Ecclesiastical Officers and their emoluments having been regulated by Canon, legislation upon this subject should, in the present instance, be carried out rather by Canon than by Statute."

2590. Is there any other point in the recommendations of the Committee of Convocation of the Province of York, besides that which you would wish to call attention to?

The next matter to which I was desirous of calling your Lordships' attention is, "that whereas the Archdeacons have hitherto been wholly Diocesan Officers, they desire not to be rendered liable to receive orders from other Authorities."

2591. Do you mean by that the Metropolitan?

Archdeacons have never been Provincial Officers, and we wish to retain our Diocesan character; and I very respectfully submit to your Grace, that Archdeacons have never received instructions except from Statute, or from canon, or from our own Diocesan, and we object to be placed under the Rules and Orders of the High Personages named in this Bill.

2592. You object to the Act which was passed some years ago, authorising the Archbishops with the Lord Chancellor and others to make certain rules as to fees?

This Bill intends to repeal that Act, and we have no objection to its repeal, but we do not wish another Act which we consider still worse to be set up in its place. The Lord Chancellor, the Lord Chief Justice, the Archbishops and one bishop, who is a member of the Privy Council, are to form a Committee to make Rules and Orders, and the Archdeacons, who never received any orders before, except from a direct Statute or from a Canon, would be obliged to receive orders from this Central Body.

2593. Bishop of *Ely.*] In fact, you object to the first section of Clause 40?

Yes. We had a meeting of the Archdeacons of the Province of York, and I was one of three elected to represent this matter before your Lordships, as we consider it a very serious one; and we think that this is a perfectly novel suggestion.

2594. *Chairman.*]

2594. *Chairman.*] You do not think it in fact desirable that any uniform system should be introduced throughout the kingdom?

I think it strikes at the root of the diocesan system, which we are anxious to retain entire.

2595. You think it would be better to leave each Diocese to arrange its mode of proceeding for itself?

That is not quite so; we object to centralisation such as would absorb independent Diocesan Officers (which the Archdeacons have ever been) under the Provincial system. This being perfectly novel in the Church, we object to it on constitutional principles.

2596. You do not object to the rules being settled by a Provincial Synod?

The Provincial Synod can make canons regulating our fees and our offices, and these would be administered in each Diocese under its own Bishop.

2597. Would you object to the Provincial Synod regulating the mode of procedure throughout the whole province?

If it was done by canon it would be binding upon us all.

2598. You do not object to centralisation in itself, but centralisation of these particular officers?

My duty is to lay before your Lordships that which the Committee of Convocation has entrusted to me, namely, "that the Archdeacons who have hitherto been wholly Diocesan Officers desire not to be rendered liable to receive their orders from other Authorities than their own Bishops, from Canons, and from Statutes.

2599. *Lord Steward.*] Is there not this difference between the cases put by his Grace, that in the Provincial Synod the Clergy appear by representation, and that a code of rules is laid down under which the Diocesan Officers act; but under sub-section 1 of Clause 40, a Committee of High Personages is to prescribe the duties to be performed by Archdeacons, or "by any person in respect of any office or employment for which he receives a salary, or other sum of money under this Act." The functions of the Provincial Synod are very different from those of a committee such as is proposed in this clause, are they not?

We consider that this clause would give the High Personages mentioned in it the power to absorb the functions of Convocation, by making Rules and Orders which ought only to be done by Canon.

2600. And would also interfere with the Diocesan Episcopacy?

Yes, and with the internal administration of each Diocese, and the Diocesan Officers.

2601. Earl *Stanhope.*] Do you think that the office of Registrar and Bishop's Secretary can be advantageously united in one person?

I object to this proposal on many grounds.

2602. Do you think it possible for the offices to be so united?

It is possible to do anything by statute the law can compel us and we must obey.

2603. Lord *Hatherley.*] Have any canons been made of late years with regard to fees?

The last Code of canons was made in 1604, and the whole of the regulations of the fees and officers of the Church were made under those canons, and continued until the passing of the 1st & 2nd Victoria, chapter 106, which was the first Act of Parliament which interfered with the canon law on these subjects. It is now proposed to repeal this Statute by this Bill. Your Lordships are aware that the Church cannot enact a Canon, under the Act of Submission of Henry VIII., without a Royal License; but Committees of the Convocations both of Canterbury and York, have revised the Canons; and the Convocations are anxious, under the directions of the bishops, to make this code of Canons such as to regulate all these matters of ecclesiastical offices and fees.

2604. That is with regard to fees and offices?

Yes; with regard to both fees and offices, just as this Bill undertakes to do.

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2605. *Chairman.*] Were those suggestions adopted by the Convocation of the Province of York?

No, your Grace; they are the resolutions of a Committee of the Lower House of the Convocation of the Province of York, and so the document I have had the honour of submitting to your Lordships is headed.

2606. You have no reason to suppose that you are speaking in the name of the Convocation of York?

I only speak in the name of a Committee of the Lower House. The last resolution asks me to appear before your Lordships.

2607. Can you mention the names of the Committee?

The Prolocutor (the Dean of York), the Archdeacon of York, the Archdeacon of Chester, Canon Randolph, Mr. Owen, Mr. Monson and myself; we were nominated by his Grace the Archbishop of York, upon a resolution passed unanimously by the Lower House to refer this Bill to a Committee; and I have the honour to submit the resolutions of this Committee to your Lordships.

2608. As representing this committee, but not as representing Convocation?

Yes.

2609. *Lord Steward.*] The Convocation of York have not met to receive the report of this committee?

No. His Grace the President was so kind as to bring the Bill before Convocation; and the discussion ended in naming this Committee, or rather the resolution Convocation came to, was to refer the matter to a Committee.

2610. Earl *Stanhope.*] With regard to the payment of fees by stamps, do you think there is any advantage likely to arise from that proposal?

I think it is very complicated, and will not pay for collecting some of the smaller fees.

2611. In point of fact you disapprove of the Bill altogether?

I disapprove of the Bill in many points.

2612. Even though the provisions of it should be carried out by Canon in the diocese?

I think the Bill itself is of too sweeping a character for the whole kingdom; it overrides many of our local customs; each diocese varies in its fees, and in its customs, and I think that there would be general objection taken to it on these grounds.

2613. But supposing the provisions of the Bill were carried out by your mode, namely, by Canon, would you then approve of the Bill?

I think it is most desirable that the Church should have opportunity given to consider the whole matter of offices, and fees; and that these be arranged by the Church itself; but I would take serious objections to the mode in which this is proposed to be done in this Bill; I could not therefore commit myself to approving the Bill.

2614. *Lord Steward.*] You do not think that Convocation, either of York or Canterbury, if they had to frame regulations upon this subject would have framed the provisions contained in this Bill?

I do not.

2615. *Chairman.*] I did not quite understand you; one of your recent answers. When you say "by canon," do you mean that there is to be an agreement between the two Convocations of Canterbury and York, or that each province is to act for itself?

Canons must be made under license from the Crown. By the Act of Submission passed in the reign of Henry the Eighth, the Church cannot consider a Canon in either the Convocations of York or Canterbury without a license from the Crown, and a Canon must be obtained by the united action of the two Convocations

2616. Therefore you are of opinion that the best way of settling this complicated question would be by getting an agreement between the two Convocations, the Upper and the Lower House of Canterbury and the Upper and Lower House of York, and the Crown?

Yes; the Crown afterwards confirming these Canons, and then they would become Canon Law, and binding upon all Ecclesiastical Judges.

2617. Can

2617. Can you mention to the Committee any instance in which such an agreement has been arrived at within the last 40 years?

I am aware that no Code of Canons has been made since 1604, but it has been under the consideration of the Convocations of both Provinces. And your Grace sanctioned the appointment of a Committee to revise the Canons, and the Committee for the northern Convocation sitting with the Committee of the southern Convocation have agreed upon a joint Code of revised Canons, and have reported thereon to their respective Convocations.

2618. Are you aware that a license was granted by the Crown some time back to consider important matters?

Yes; for the revision of the Rubrics, but not for the revision of the Canons?

2619. Has any agreement been arrived at by this body with regard to the matter?

We have agreed in the Lower Houses of Convocation; the Committee of the Lower House of Canterbury and the Committee of the Lower House of York have met and presented to their several Convocations a joint report upon the revisions of the Rubrics.

2620. Has that report been considered by the Upper House of Convocation?

The Upper House of Canterbury has not yet considered the report, but the Upper House of York has considered it.

2621. Supposing it were objected to your system of legislating by Convocation, that all experience has shown that that is not legislating at all, what would you say?

I should say that Convocation did legislate in 1604, and that this could be done again.

2622. You do not consider that the case of godfathers and godmothers, in the government of Lord Palmerston, is a case in point?

The new Canon on godfathers and godmothers appears to have been stopped in some lawyer's office; nobody knows where.

2623. Is it not your opinion that there is a great danger that your Canons might founder in the same way as regarded the fees?

I have not the slightest hesitation in saying that if the matter were taken up vigorously by Convocation and the country, it would be best to adjust it in that way.

2624. Will you explain to the Committee what you mean by "the country"?

I mean that your Lordships sanctioning such an arrangement would give this subject a proper position in the country.

2625. Lord *Hatherley.*] You say that the fees vary in different provinces, do they vary in different dioceses?

Yes, they vary in each diocese.

2626. Therefore would you be of opinion that Convocation acting for all the dioceses of a certain province should lay down a general law for the province?

Every bishop would be present in the Convocation from his own diocese, and would guide towards that which was the best for his diocese, and would take care also that no local feeling or custom was abruptly interfered with.

2627. But supposing one bishop was of opinion that that was best for his diocese, which some other bishop was of opinion was the reverse of good for his diocese, how would you arrange the matter?

Convocation must arrange it, as is done in the House of Commons and the House of Lords; namely, by doing what is best for the general good.

2628. You do not object, as I understand it, abstractedly to there being one law for all the dioceses, but only to the mode in which the law should be enacted?

I object to the proposed mode of doing it, and I am very anxious that these things should be effected by a proper representative body.

2629. Would you think it desirable to have uniformity in the dioceses?

I think that it might be arrived at.

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2630. Do not you think it is desirable if it could be arrived at?
I think so.

2631. *Lord Steward.*] Are you aware that the form of subscription to the Prayer Book made use of by the clergy has been altered of late years?
It has been altered.

2632. Will you inform the Committee how that change was effected?
I believe the alteration was effected by statute.

2633. Was it effected by statute only?
Yes, I believe, by statute only.

2634. Has no canon been passed, upon the subject?
No canon has been passed so far as I know. The Church has a constitutional right to obtain the Royal license in these matters, as set forth in the Royal declaration in our Prayer Book to that effect, viz.:—

"That We are Supreme Governor of the Church of England: And that if any difference arise about the external policy, concerning the Injunctions, Canons, and other Constitutions whatsoever thereto belonging, the Clergy in their Convocation is to order and settle them, having first obtained leave under Our Broad Seal so to do: and We approving their said ordinances and constitutions; providing that none be made contrary to the laws and customs of the land.

"That out of Our princely care that the churchmen may do the work which is proper unto them, the Bishops and Clergy, from time to time in Convocation, upon their humble desire, shall have license under Our Broad Seal to deliberate of, and to do all such things, as, being made plain by them, and assented unto by Us, shall concern the settled continuance of the doctrine and discipline of the Church of England now established."

2635. *Chairman.*] Is there any other point besides those you have mentioned which you would like to bring before this Committee?
The next point is that the Committee of Convocation of York is of opinion that "the real and personal property, dealt with under the 4th section of the 2nd part of this Bill, should not be disposed of by those persons who are to frame the rules and orders;" the Committee think it a very large question whether this real and personal property ought to be placed at the disposal of those High Personages.

2636. What is the ground of their objection?
The reason that they object is, that this body would sit with closed doors, with no opportunities of parties being heard, or objecting to the disposal of this property, and no opportunity of being heard on oath; and further, that the capital may be spent or "otherwise applied" under the rules and orders; it is not merely the interest, but the capital which may be spent, which your Lordship will find in page 3 of the Bill.

2637. What property is it that you suppose that refers to?
I am referring to the 4th Section of the 2nd Part; it is set forth in that section: "From and after the passing of this Act all property, real and personal," vests in the Ecclesiastical Commissioners, and the interest and principal may be disposed of by this Board constituted under the Bill.

2638. Is that after the matter has been submitted to Parliament?
The rules and orders are to be submitted to Parliament, and they are to lie upon the Table a certain number of days.

2639. You do not consider that sufficient?
We object to those who may be interested in this property not being heard in the first instance before the rules and orders are made.

2640. Is there any other point which you would like to mention to the Committee?
Yes; with regard to Section 5, the Committee which I represent is of opinion that "no material saving would be effected by uniting the offices of the Bishops' and the Archdeacons' Registrars in one person, and that it would tend greatly to convenience that they should remain distinct."

2641. Is your Registrar different from the Bishop's Registrar at present?
Yes; we have one Registrar for the three Archdeacons.

2642. Bishop of *Ely.*] What do you think would be the inconvenience of having one Registrar for the Bishop and the Archdeacons?

We

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We consider that the Archdeacon's Court is, ecclesiastically, "the court of first instance," with an appeal to the Bishop, just as there is an appeal from the Petty Sessions, to the Quarter Sessions, and it would be very inconvenient to have the same law adviser for both Courts.

2643. *Chairman.*] The Archdeacon's Registrar sits in your Court?
Yes.

2644. What does he do?
Both for parochial and general visitations Archdeacons may hold a court, and also for the purposes of the Act giving us jurisdiction over Parish Clerks. We can hold a court, and can administer oaths; the Bill, as amended, retains these powers.

2645. Do you consider that the matter of parish clerks is one of the principal things in regard to which your court sits?
I do not. I refer to it merely because that Act gave Archdeacons statutory powers in that respect. Archdeacons have now canonical power both in parochial visitation in regard to keeping up churchyards, in making those who have the rectorial tithes pay for the repair of the chancel, and so on.

2646. Lord *Hatherley.*] Do you grant faculties?
No; Archdeacons cannot in the Diocese of Durham.

2647. *Chairman.*] Can you account for the great difference between the Archdeaconry of Durham and the Archdeaconry of Lindisfarne in regard to churchwardens?
I did not hear my brother Archdeacon Prest give his evidence, and I do not therefore know what he said.

2648. Is there anything in Durham which makes the churchwardens less willing to attend visitations than they are in Northumberland?
It is the fact that the Churchwardens do not attend Visitations in the county of Durham, and that they do in the county of Northumberland. My archdeaconry is agricultural, while that of Durham contains mines and iron works, and large towns, with quite a different population.

2649. Bishop of *Ely.*] Do your churchwardens attend upon the same day with the clergy?
Yes, always.

2650. Is there any entertainment to the churchwardens or to the clergy?
I entertain the clergy and the churchwardens of the parish in which I hold my visitation, and any others I choose to ask.

2651. You do not invite the churchwardens as a body, do you?
No, I do not.

2652. And there is no meeting for conference with them?
The answers to the "articles of inquiry" are presented to the Archdeacon in his Court, and each Churchwarden is asked when he presents his "articles of inquiry," if he has anything to say about his Parish.

2653. Are the churchwardens present at the charge?
They invariably attend Divine Service and hear the charge; and a certain portion of it is addressed especially to them.

2654. Do the churchwardens pay their fees?
They paid their fees almost to a parish, until they were raised from 15*s.* to 18*s.*

2655. *Chairman.*] Are the churchwardens reimbursed out of any church fund?
The fees are generally taken out of any funds they may have in hand.

2656. You do not see any impropriety in their being reimbursed out of any funds disposable for parish purposes?
I had rather we had the old system of the Church rates; these are still collected in many of our parishes; I do not like a payment for a purely secular purpose being made out of the offertory, but "necessity has no law," and we are obliged sometimes to sanction it.

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2657. Is there any other point which you would like to bring before the Committee?

We are particularly anxious to press upon this Committee that the Archdeacon's Registrar should not be absorbed into an office wholly under the bishop; the work of our registrars in summoning the churchwardens, and the clergy; and in preparing and issuing the "Articles of Enquiry" for each Parish is by no means a sinecure.

2658. You would have one registrar for all the Archdeaconries?

I would have one registrar for all the archdeaconries of each diocese; this is found to work well with us.

2659. What is the next point which you would like to bring before the notice of the Committee?

The next question is under Section 12; I have no doubt it has been brought before your Lordships' Committee by other witnesses; we are of opinion that the words "during good behaviour," should be substituted for "during the pleasure of the Bishop," in the appointment of the Registrar, and that the tenure of the office of Registrar should not depend on the avoidance of the See. Then as regards Section 11, we say that this clause should run thus: in place of the words, "who is not or who has not been," should be put, "who, if a barrister, shall not be less than of seven years' standing, and resident within the diocese." This latter clause refers to the office of Chancellor.

2660. You would prefer a clerical Chancellor, would you not?

I would leave it optional. Our suggestion, if adopted, would leave it open to the Bishop to appoint a Clergyman if he found a good legal head among his Clergy. Then we wish Section 16 to be omitted. We wish our Chancellor to be resident in the Diocese.

2661. Is your chancellor resident now?

A new chancellor has just been appointed.

2662. Did Mr. Headlam reside among you?

He did, as much as a Member of Parliament could do. His family residence was in the county of Durham.

2663. Was not the deputy Judge Advocate at one time?

Yes, and he was also Chancellor of Ripon; but he was a good deal among us, because his duties as Member of Parliament for Newcastle brought him among us.

2664. Is he a barrister?

I do not know; I believe he is. I have only seen the new appointment in the newspapers.

2665. Has it been customary for the Chancellor to reside in the Diocese?

Chancellor Baker, who was a clergyman, always resided in the diocese; he was Vicar of Whitburn, and we found the advantage of his being resident.

2666. In fact, it would probably be difficult to procure an eminent barrister to reside there?

Certainly, for 200 *l.* a year.

2667. Do you know the value of the chancellery?

The value of the chancellery is about 300 *l.* a year with us; but I think this Bill would reduce it to 200 *l.* a year.

2668. What is the next point which you wish to mention to the Committee?

Then with regard to the 36th Section, the committee of Convocation were of opinion "That whilst the fees paid for marriage licenses are open to review, the payment to Surrogates should remain as at present."

2669. What is the charge for the Surrogates at present?

In the diocese of Durham the total charge for a marriage license is 2 *l.* 12 *s.* 6 *d.*

2670. What does the surrogate receive out of that?

The surrogate receives 17 *s.* 6 *d.*

2671. So that the proposed fee of 5 *s.* would be a very great change?

It

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It would be a very great change, for in our maritime towns it is of real value to Incumbents of poor livings who are Surrogates. Sailors will not wait to have their banns called, and prefer getting a license. When Vicar of Berwick I did a large surrogacy business, and now that I am in the country I do not issue more than one or two marriage licenses in a year.

2672. The livings are very small, are they not?

Yes, in many of our maritime towns; the surrogacy is worth in the town parishes on the sea coast about 30 *l.* a year, and if other arrangements could be made to reduce the price of the marriage licenses we see no objection, but we wish the surrogate's fee to be retained as at present.

2673. What is the next point which you wish to mention to the Committee?

With regard to section 37, we suggest, "That it is not desirable that procurations and synodals should be abolished; but if the Archdeacons are no longer to receive them, they should be vested in the Governors of Queen Anne's Bounty for the general purposes of their trust." We consider that these procurations and synodals are a property in themselves; the livings were accepted with this charge upon them; and in my Archdeaconry they are paid only upon the older and better livings.

2674. Do the laymen pay them?

The procurations are paid by the clergy only in the Archdeaconry of Lindisfarne.

2675. They are not paid by the lay rector?

No lay rectors pay with us. The amount payable to the Archdeacon of Lindisfarne is 13 *l.* 16 *s.* 4 *d.*, which is regularly paid, and might be made available for the augmentation of small livings. If these were abolished the charge might fall upon the Ecclesiastical Commissioners to make up the Archdeacon's stipend, and that would prove a loss to the Church.

2676. And it would be no saving to the poor clergy, because they do not pay them?

Not with us, because the new parishes do not pay them.

2677. Now will you state your next point to the Committee?

It is with regard to Section 40, which has been already considered very fully. The Committee of Convocation resolved, that "If it be intended to include Archdeacons in the application of sub-clauses 1, 3, 4, the committee object to this arrangement, inasmuch as it would take from their diocesan character." Then with regard to Section 50, the Committee adopted a resolution passed by the Archdeacons of the southern province which is to the following effect: "The committee entertains a strong objection to the payment of the salary of the Ecclesiastical Judge, constituted under the Public Worship Act, being defrayed from fees levied on the parochial Clergy and Laity, no adequate proportion of the same salary being charged upon the higher Dignitaries of the Church." I have no doubt but that others have made the same objection.

2678. You do not consider that the marriage fees pay a large proportion of the matter?

We put in the word "laity" for the purpose of including the marriage fees.

2679. You do not consider that those fees at present go to the Vicar General?

My experience does not extend to the Vicar General.

2680. You think a distinction may be drawn between the Vicar General and the Dean of Arches?

I do not know how these officers are paid.

2681. Is there any other point which you desire to mention to the Committee?

We are anxious that the 6th Section should stop at the word "exercise." It is on page 4 of the Bill, line 16. We do not understand this clause; for if it is by it intended to retain the jurisdiction and position of the Archdeacons as they are now, why should the words "personally and without process of court" be put in; for if this be the intention, the clause need not go further than the word "exercise." It seems to leave Archdeacons just as they are, but when taken in conjunction

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conjunction with the 43rd Section, page 4, it seems not to do that which is intended. This appears to be a clause for the purpose of retaining the position and the jurisdiction of the Archdeacons, whatever that may be; and yet when read in connection with the 43rd Clause, it seems to take from us something, for it says, "Except in so far as such duties" (of Archdeacons) "may not be altered or abolished by this Act;" so that something is altered or abolished; and we are afraid that this something is included in this section, and we are anxious therefore that the clause should stop at the word "exercise;" and then we think that there would be no necessity to put in an exception to the exception, namely, that the Archdeacons should still have authority over Parish Clerks.

2682. You wish the present process to be retained, do you not?
We do not wish the process to be abolished by the proposed statute; and I may mention that a Statute does not repeal a Canon, and that Archdeacons would still have canonical powers, and the canon law would still be binding upon all ecclesiastical judges; and this Bill would really make a still greater confusion than at present between the Statute and the Canon law.

2683. Would you mention to the Committee any particular in which the Bill would have that effect?
By taking jurisdiction from the Archdeacons which they now possess by Canon.

2684. What sort of jurisdiction do you refer to?
The visiting of churches as a court.

2685. That is all saved?
That may be the intention of the Bill, but I think there are many canonical powers which are not saved.

2686. Will you mention any?
I may say from my own experience, that where there has been a dispute between Churchwardens, Incumbent, and laymen, with regard to the right to tombs, and the keeping up of the repairs of tombs in the churchyard, I have sat to consider the matter as a court, and cited everybody concerned.

2687. You think that that jurisdiction will be interfered with by this Bill?
Yes

2688. And you think that it ought not to be interfered with?
I think that it ought not to be interfered with; many of the semi-defined jurisdictions and authorities, which archdeacons do now canonically exercise, prevent litigation, upon "the stitch-in-time-saves-nine" principle.

2689. Is there any other point which you would like to bring before their Lordships?
Yes. If the Archdeacon's Registrar be done away (which we hope will not be the case) the Archdeacons think that they ought to be given a voice in the appointment of a Diocesan Registrar, and we would argue that the Ecclesiastical Dilapidations Act gives precedent for so doing, because it puts the appointment of the Diocesan Surveyor in the joint authority of the Archdeacons and Rural Deans. Will you allow me to say that the Bill contains no provision for doing away with the procurations of the Bishops and Archbishops, but only those of the Archdeacons; and it would be awkward if these were collected by the Bishop in every fourth year. We further take exception to this Bill as doing away with fees; and then, immediately afterwards, in Section 40, Sub-section 4, it gives authority for "settling those fees;" and we are anxious to inquire who are to pay for the election of a Proctor to Convocation. There is nothing settled in Sub-section 5, of Section 40, upon the subject.

2690. Who pays now?
It is a general scramble; there is no law upon the subject; in my own case I have made this payment to follow the rule of elections in counties and boroughs. Every candidate must agree when he is nominated to pay his proportion of the expenses; and the Registrar who travels 60 miles to attend the elections and to take the poll; and who has summoned all the clergy, and paid for advertisements, printed forms, and the parchment document upon which the return is made, divides the fees by the number of candidates, and sends the account to each; but we have no legal power of recovering the amount, it is only a debt

of

of honour. But this Bill proposes to do something which is very undefined; for it does not say who is to pay.

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2691. Will you read the words of the section?

It is Sub-section 5 of Clause 40: "For settling the fees to be taken at the confirmation of the election, or at the consecration of any archbishop or bishop, and at the appointment of any person required by this Act to sign the declaration contained in Schedule (D.) to this Act, and at the election of a proctor to Convocation, or on any of such occasions."

2692. You object that that section settles the fee, and does not say who is to pay it?

It is a matter of inquiry, who is to pay the fee; in some places the Archdeacon pays it; which I have avoided, in the way stated to your Lordships.

2693. Is there any other point which you would wish to mention to the Committee?

This Bill, if it became law, would establish an entirely new officer, namely, a "Deputy Archdeacon." The canonical word is "Official," and we prefer much to retain this ancient term to the new one of "Deputy Archdeacon;" Exception has been taken to Clause 47, which provides for certain assignments of offices and fees in the case of the erection of the new Bishopric of St. Albans; and this points out that the Bill itself, if it passed into law in its present shape, would be a hindrance to an increase of the Episcopate, unless some provision were adopted with elasticity enough to provide for additional Dioceses. The Bill provides for one new Diocese, but seems to shut out the possibility of increasing their number without another Act of Parliament to regulate the offices and fees of each new diocese; and it seems to us that if the Bill become law, there should be a provision with some elasticity of working in case of the subdivision of our great Dioceses. I may be allowed further to observe that in Schedule (C.) it is proposed to be enacted, that "the Registrar of the Diocese shall discharge the duties of the following offices in their respective Dioceses: first, registrar of the Commissary Courts, if any; secondly, the duties of Bishops' Secretary;" and that there is no provision for his acting as Registrar to the Archdeacons, which latter office is abolished by another part of the Act.

2694. Is it not in the body of the Bill?

I have not found it there.

2695. Does it not appear in Clauses 9, 10, and 12?

It did appear, but it disappeared again from the last version of the Bill.

The Witness is directed to withdraw.

The Reverend CHARLES ABBOT STEVENS, is called in; and Examined.

Rev. *C. A. Stevens.*

2696. *Chairman.*] You have read this Bill, have you not?

I have.

2697. Is it your opinion that in any clauses it would press heavily upon the clergy?

I should rather say that it does not give them that relief from the burdens upon them, for which for many years they have been hoping.

2698. Would you point out to the Committee what sort of relief you allude to?

I suppose the relief would be in the diminution of those fees to which they have been liable heretofore.

2699. Would you mention what are the fees which principally press upon the clergy?

The principal are the fees chargeable for presentation, institution and induction.

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2700. You allude to the fees proper, and not to the stamp duty paid to the Government.

I am speaking of fees proper; the stamps are an additional grievance, of course. So, also, first-fruits and tenths are additional burdens.

2701. What is the fee payable on institution?

The fee on institution, according to the scale which has been approved of, is 7 *l.* 13 *s.* 6 *d.*, that is by the Order in Council of 1857.

2702. Is that upon all livings?

Yes, upon all livings.

2703. You think it would be better that the fees should be proportionate to the value of the livings?

I think so. The whole of the fees for collation or presentation, institution, and induction, amount to 17 *l.* 16 *s.* 6 *d.*

2704. Do you consider that the power given to the authorities in this Bill enables them to make a graduated scale?

I apprehend that it does.

2705. So that so far this Bill would be in accordance with your views?

It might possibly, so far.

2706. But you would rather that in the body of the Bill there should be some actual arrangement for the diminution of the fees?

I should be glad to have some guaranty that the fees paid by the clergy should be applied in some better manner than that of paying such very high salaries to the officers as heretofore. One case that I might advert to is the case of Mr. Lee, who is secretary to five bishops or archbishops, and joint secretary to three others. According to his return I make out that his total fees amount to 3,260 *l.* a year; and allowing from that a deduction which I understand him to claim, of 30 per cent. for expenses of clerks and expenses of various kinds, it leaves a balance of 2,283 *l.*; and considering what you Grace has heard to-day with regard to the grievances under which the poorer clergy suffer from the burdens of these fees and other expenses upon them, I think it is no wonder that there is a very strong feeling among them that the fees which they have hitherto paid might have been better applied.

2707. You are of opinion that it is desirable to continue the practice by which the same person should be the officer in various dioceses?

No, I have not said that.

2708. Then supposing that it was arranged that a person should be only an officer in one diocese, he would not receive such a sum as you have mentioned; it is only by being the officer in many dioceses that he receives such a sum?

You might take a single diocese, Canterbury for instance, where the amount is 1,091 *l.*; we should consider that was a very large amount to be paid out of our institution and other fees.

2709. You mean as proposed by this Bill?

Yes, taking it as admitted by this Bill.

2710. How much is the sum proposed for the registrar under this Bill?

I make it average 800 *l.*

2711. You did not hear the evidence of Dr. Deane on the subject, I presume, of the remuneration of the registrar?

I did not hear Dr. Deane give his evidence, but I should say that if out of the 800 *l.* the registrar had to provide the registry, and if there was more work than one man could do, I should not consider 800 *l.* too large a sum, but in many dioceses I should suppose the amount of work would not be more than one man could do; in some dioceses there is a registry already provided, and in those dioceses that would be more than a sufficient amount.

2712. You think that probably the officer, however many offices are united in his person, could do some other work?

Undoubtedly, and one great reason why the office is valued very much is, because it gives a man a stamp, and brings him a large amount of secular work from the neighbourhood around.

2713. You

2713. You would apply that to the registrar and secretary of the diocese; would you apply that to the vicar general of the province?
I have no knowledge of his office or duties.

2714. Supposing that officer to have very important duties to perform, it would be necessary to secure the services of a lawyer of very considerable eminence, would it not?
As regards the vicar-general, I can give no opinion. I would rather confine my view to the diocesan question; my own view is very much in accordance with what I have heard to-day, that the diocese is the integer, and that it is most desirable to make the whole of the work of the diocese manageable within the diocese, and by the officers of the diocese. It may be necessary for purposes of appeal, to have a provincial officer, as above the bishop we have the higher officer, the archbishop; but it is to the bishop and his officer that I look as constituting substantially the system under which we work.

2715. And you think that under this Bill such officer of the diocese would be overpaid?
I think that 800 *l.* would be, in an ordinary diocese, a not unreasonable amount, supposing that the registrar had to pay out of that the cost of the registry, the clerks and the travelling expenses, and that his own time was chiefly occupied in the work.

2716. That is what is provided in the Bill, is it not?
Yes, that is what is provided in the Bill.

2717. Therefore you do not object to that?
I do not object to that amount, taking it as the average. I say this with some hesitation, for it would be large compared with the incomes of the clergy and most of the laity who contribute to it.

2718. I do not quite understand what you alluded to in saying that the registrars were overpaid?
I was referring to one gentleman who held several offices. My point was to show that the clergy feel, and have some reason in feeling, that they have a very considerable grievance in having to pay those fees out of their pittance, in order to provide so large an income for one man.

2719. Bishop of *Ely.*] But if 800 *l.* is not too much as the payment for one diocese, and therefore affords no reasonable cause of discontent for the clergy, why should there be a reasonable cause of discontent because the same man is serving in several dioceses, and by that combination producing a larger income?
There is the broad fact that one man is making this large amount after deducting his own expenses; I have taken off the 30 per cent. that he claims.

2720. But he makes up that large amount by a combination of items, each one of which items is in itself reasonable; namely, the payment for each individual diocese?
I think that the work is more than one man can possibly do.

2721. You think that pluralities ought to be abolished among bishops' officers as well as amongst the clergy?
Under such circumstances as these. Undoubtedly I would not say that under no circumstances should the same person hold two offices; but I do say that when such a case as this is shown to the clergy, it is no wonder that they have a strong feeling that they are paying very highly for the advantage of one man. Of course we know Mr. Lee is a gentleman of the highest possible character in every point of view, but that is not the question.

2722. Would the clergy feel the same objection to paying a firm of solicitors who made 10,000 *l.* a year from other sources?
They would feel it very hard to pay such a man from their fees.

2723. Do you consider that the marriage license fees come from the clergy?
No.

2724. They do not go to the secretary, but they go largely to the registrar, do they not?
I believe they do.

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2725. Therefore, of course, one portion of this large revenue is made from a source which affects in no way the clergy?

I have not mentioned the marriage licenses as being a burden upon the clergy, but I think they are a burden upon the Church laity.

2726. You do not consider that this 2,000 *l.* a year is made from fees paid by the clergy?

No, but a considerable portion of it is.

2727. You consider that it would be better that one officer should do the duty in one diocese, and not in two dioceses?

Yes. We have seen how the matter has worked in the Diocese of Chester, and it seems to me that that goes a long way towards furnishing the key to the whole question. In Lichfield, very much the same sort of arrangement prevails. In fact, where the secretary or the chancellor is a clergyman, it seems to me that a considerable advance has been made in reducing the burdens upon both the clergy and laity of the diocese.

2728. Are you aware that in Lichfield a clergyman has just been superseded by a layman?

I apprehend that what reductions have taken place, have taken place under the administration of the clergyman.

2729. You mean under the administration of Chancellor Law?

No, it is the secretary, in the case of Lichfield, to whom I am adverting.

2730. Do I understand that you think it desirable that the bishop's secretary should be a clergyman?

I think he may be, with advantage. I was referring to the chancellor, chiefly with regard to Chester and Peterborough.

2731. But the chancellor of Lichfield is at present a layman?

I only mean generally to point out that where the clerical element has been introduced among these officers a reduction has taken place which has not taken place in other dioceses. In Chester, Chancellor Espin is a clergyman, and in Peterborough, Chancellor Wales is a clergyman; and in Lichfield, Chancellor Law was, and the secretary was, and I believe is, a clergyman.

2732. Are you aware which chancellor would be the most richly paid in England?

I am not.

2733. Would you be surprised if you heard that it was the chancellor of Chester?

That would not affect the question of the benefit which the clergy and laity have derived under his administration.

2734. Earl *Nelson.*] Not if by such administration the fees were generally diminished?

It might be so, then.

2735. *Chairman.*] But you do not hold that it would be better that all these officers should be clergymen?

I would not say that the registrar must be a clergyman, but I think in many dioceses it might be a great advantage to have a clerical chancellor, and there were reasons given for that by Chancellor Espin, of Chester.

2736. You would not apply that to the bishop's secretary?

I see no reason why the bishop's chaplain and secretary should not do a great deal of valuable work.

2737. Do not you think that there might be some difficulty in getting proper legal instruments, unless the clergy are to undergo a course of legal training?

I am rather of opinion that it would be of great benefit to the clergy to study law a little more.

2738. But he ought to go into an attorney's office to do that?

As regards the work which is supplied by the registrars, I rather fancy that it has been overrated; as regards faculties, I know it has been thought that they

they have a great deal of work to go through. But what is the fact; I have had to obtain two or three myself. I have drawn up the petition for a faculty; that has come back to me *ipsissimis verbis*, with a little preface and a little affix, but, practically, identically the very same thing which I sent; that has then been put upon the church doors, and sent back again to head-quarters, and returned at last in the form of a faculty; the whole thing has been done by myself, and little more than copied out by the boys in the office.

2739. That would be in the case of an undisputed faculty, would it not?
That would be an undisputed faculty.

2740. Supposing it had been disputed, the case would have been very different?
Then, no doubt, difficulties would have arisen; but legal assistance can always he obtained *pro re natâ*.

2741. You are now in the diocese of Rochester, are you not?
I am.

2742. With regard to consecrations, and the conveyance of land, I presume you hardly think it is desirable that a clergyman should draw up the deeds which carry the conveyance of land?
I am not prepared at all to say he should do that. Nor do I contend that the secretary must be a clergyman, but I see no reason why, as I said at first, the clerical element should not be introduced more than it is now. You have seen how it has worked in Chester. For one reason, I think it would be a very good thing to encourage the knowledge of law among the clergy; it would save a great many uncomfortable questions arising.

2743. Is there any point you would wish to mention to the Committee upon which you have not been questioned?
Yes, there are one or two questions that I would wish to submit to the Committee with regard to faculties. I would show that Peterborough has been a diocese which has been foremost in reducing its scale of fees; they have been reduced now to two guineas. It once devolved upon me, as the secretary of a committee, to have to apply for a faculty for restoring the parish church of Oakham, in Rutlandshire. I applied to the secretary at Peterborough, who, I must say, was always ready to give every kind of help that he could, and I requested him to take the ordinary course of obtaining a faculty, and I received at last a bill for the amount of 19 *l.* 6 *s.* 10 *d.*

2744. You say he was quite ready to expedite the matter?
No difficulties were made whatever, and no one appeared to oppose the grant of the faculty. This was in the year 1857, and I only advert to this to show the system which was then adopted in a diocese where every help was given to the clergy in church work. Now, under the administration of Chancellor Wales, the fee has been reduced to two guineas for the whole expenses of the faculty.

2745. Do you know when that change was adopted?
I think it was adopted very recently, within the last two or three years, but I am not sure of the date.

2746. I do not know whether you have followed the example of the diocese of Canterbury where we have a lay chancellor?
I do not know that. Then there is a point which I would wish to introduce, which is this; it is a difficult one for me, not being a lawyer, to enter upon; but it rather touches upon the rights and powers of chancellors, and in this case, again, I am happy to speak of the diocese as being one in which the chancellor and registrar are most anxious to promote matters; but at the same time a view has been put before me which I fancy is hardly tenable in law, and is really an uncomfortable one to report. Having in my parish of Blackheath had a wish expressed to put up some memorial tablets in the church, and having a strong feeling against their being dotted about in an arbitrary manner, I thought the best plan would be to propose a definite plan by which the tablets might be introduced so as to ornament the church; we therefore proposed to put up round the church a tile work string course, with spaces in it for the erection of

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tablets, for the inscription of names and dates only; we had other work going on at the time, and I therefore asked for a faculty to include this; first of all I applied to know the cost of a faculty, and the answer was 5 *l.* 17 *s.*, which is the rate according to the Order in Council; but the answer from the registrar said: "In every instance a person wishing to erect a monument or a tablet in a church must apply by petition for permission to do so, stating what the intended inscription is, and likewise the dimensions of the monument. The judge cannot invest an incumbent and churchwardens with his authority in the matter to determine what may or may not be done." I then pointed out in answer that the petition limited and defined the size of all tablets, and that inscriptions were expressly limited in the petition to the name and date; I then asked: "Do I understand you correctly to say that no faculty can issue giving power to insert such tablets so defined and inscribed as occasion may arise, but that a fresh faculty must necessarily be had for every individual tablet; if so will the cost of each faculty for each such tablet be 5 *l.* 17 *s.* as specified before?" The answer of the registrar was, "We have submitted your letter to the chancellor, and are instructed to say that there are four particulars to be noticed therein. First, in granting a faculty for a monument, the Ordinary decides, under the averments stated in the petition, upon the size of the monument to be erected; he cannot limit himself to any size or particular." The meaning of that is that he could not bind himself by the first original faculty to what may be required in future faculties. "Secondly, the Ordinary cannot limit himself to an inscription merely of the name and date. Thirdly, undoubtedly a fresh faculty must necessarily be had for every individual tablet; it would be a fraud upon the revenue to the extent of 12 *s.* in each case to erect a tablet without a faculty; and, fourthly, the cost of every faculty legally will be 5 *l.* 17 *s.*" So that we were placed in this position, that for the erection of a tablet which itself cost 5 *l.*, and the inscriptions upon which were beforehand arranged, we were to be called upon to pay 5 *l.* 17 *s.* for each particular tablet.

2747. That is one of the abuses which you think it is very desirable should be remedied?

Undoubtedly; and that abuse arises from the scale of fees which was appointed in 1869 fixing the amount; supposing, of course, that the right to insist upon a succession of faculties in such a case is maintainable.

2748. You think, therefore, that it would be right that there should be a revision of the scale of fees as proposed in this Bill?

Quite so. Then there is another case to which I will ask the especial attention of the Committee, which is the most important and most serious of all, it is the case of Tottenham.

2749. That is in the diocese of London, is it not?

Yes. On being appointed to the vicarage of Tottenham, the vicar, the Rev. Alex. Wilson, found it necessary to propose certain alterations in the church. Those alterations proposed were, firstly, to raise the walls of the nave and the roof of the church, with the addition of clerestory windows; secondly, to make a slight addition to the nave and aisles at the east end of the church, and further to extend the east end of the church by constructing a chancel and two vestries; thirdly, to remove two galleries; and fourthly, to re-arrange the sittings and pews. An opposition was raised in the parish to these proposals. The case was tried in the Consistory Court of London, and three out of the four points were ruled in favour of the vicar. The fourth point, which was the raising of the walls of the nave and the clerestory, was refused, and the chancellor condemned the vicar in all the costs. The amount of the vicar's own costs was 256 *l.* odd, and the costs of the opposing party were 122 *l.* 18 *s.* 6 *d.*, the whole being 379 *l.* 12 *s.*

2750. Have you any idea how those costs arose?

Yes, I have the details of them.

2751. Were counsel employed?

Counsel were employed in the first instance. Then a second stage occurred. A year afterwards the parishioners thought better of it, and those who before had been anxious to oppose the clerestory were now in its favour; at least, they withheld all objection. A vestry was held, and a resolution for a faculty was

was carried unanimously. The chancellor upon the application for a faculty desired the employment of a proctor. The result of the whole was, that although this was an unopposed faculty, without difficulty of any sort or kind, the costs amounted to 41 *l.* 14*s.* 2 *d.*

2752. Was that when Doctor Lushington was chancellor?
This was when Doctor Tristram was chancellor. The first trial was on 25th March 1874, and the second was about the middle of last year. I mention this as a very strong instance of the way in which the clergy are exposed to great expense, without any real reason at all. In this case the vicar was put to a cost of 41 *l.*, after being at the cost of 379 *l.*, when at the very first three out of the four points had been conceded, and at last the fourth point was conceded without opposition.

2753. How much of the 40 *l.* went in the shape of ecclesiastical fees?
I have tried to distinguish; but I cannot take out the items.

2754. Probably 6 *l.* or 7 *l.* was the amount of the ecclesiastical fees?
I have been unable to pick out the items, they are too intricate for me to distinguish.

2755. What could be the reason for desiring the presence of a proctor?
I cannot conceive at all.

2756. Was it from a fear of some contentious litigation arising?
That I cannot think, for the vestry was unanimous in favour of the work.

2757. There had been litigation originally, had there not?
Yes, and that possibly was the reason in the chancellor's mind; but whereas the vestry reported that there was no opposition, I cannot see why it should have been made a source of additional expense.

2758. Do you think it would be possible or desirable to introduce some stipulations into the Bill to prevent the employment of counsel and the calling in of proctors?
I think, if the course adopted had been that which Chancellor Espin has described to-day, we should have heard very little about any trial at all.

2759. You think if Doctor Tristram had been a clergyman, it would have been all right?
I think he would have had much more chance of drawing together the clergy and the objecting laity of the parish, than when he came as a dry legal official.

2760. Is there any other point in the Bill to which you would wish to draw their Lordships' attention?
There are various points in the Bill which I should be glad to speak of, but I think they have been fully spoken of by other witnesses to-day. One point I should like to mention is, that I have reason to believe in many dioceses there is no registry; it does seem to me that one of the things of the first importance, if any surplus at all arises upon the fees, would be to apply it to obtain a permanent registry in each diocese.

2761. There would be power to do that under the Bill, would there not?
Not to provide a registry, as I understand it. I would further remark upon the question of the Rules and Orders that I should very much fear that a body constituted as this is to make Rules and Orders would not command satisfaction among the clergy or churchmen throughout the country; and I might appeal to two reasons, with all due respect, first, that, in the past, scales of fees have been settled by the Archbishops and the Lord Chancellor, which certainly do seem to be very much higher than is reasonable.

2762. You are aware that they have reduced the fees?
I am aware that they have reduced the fees, but not to the extent that they should be reduced, as will be seen by the experience of other dioceses. Chester, Lichfield, and Peterborough, have practically found a great advantage in reducing the fees further. Another reason is that there is no diocesan element at all in that body. There is nothing at all which represents either the clergy or the laity of the diocese.

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2763. You think it better that they should be arranged in each diocese?
I think, as far as possible, a diocese should be considered, as I said at first, as an integer; it should be as far as possible self-contained. Again, in Clause 39, with regard to the meeting of chancellors, vicars general, and registrars; it seems again that that meeting will be composed entirely of officers who are on one side, and whose interests lie not in the direction of those who have to pay the fees. I think that in such a meeting as that there should be a representation either by archdeacons or proctors or some other mode, which should give a fair representation to the clergy.

2764. Earl *Nelson.*] You mean by the word "proctors," proctors in convocation?
Yes, proctors in convocation.

2765. *Chairman.*] You would prefer, probably, proctors from convocation to archdeacons representing the clergy?
I should.

2766. The archdeacons being recipients of fees, while the proctors are not?
Yes; not, however, excluding archdeacons, who should themselves be represented. May I mention that in Clause 42 there is what I think is a lapsus; it is a very minute point to mention; but in the 5th line it says, "signed by the chairman of the vestry," which seems to signify that the clergyman's churchwarden must be appointed at a vestry. I believe it has been established that a clergyman may appoint his churchwarden by a signed notice published upon the church doors, and therefore it would not necessarily be at a vestry. As regards Clause 36, the sum of 5 *s.* is allowed for the surrogate ordinarily, but only 2 *s.* 6 *d.* is allowed in the Province of Canterbury and Diocese of London. Now I would venture to suggest, that whatever is allowed for one ought to be allowed for all.

2767. You would raise the fees in the Dioceses of Canterbury and London?
I would raise the fees for the Province of Canterbury and Diocese of London, and for this reason, that as between the provincial officers and those of the dioceses around, it raises an uncomfortable feeling that the latter have been a little underbidden by the provincial officers. In my diocese it is 2 *l.* 13 *s.* 6 *d.*; and in Doctors' Commons it is 2 *l.* 2 *s.* 6 *d.*, and people go from the Rochester Diocese to the provincial officers to get their licenses. I think, indeed, that licenses ought to be issued for each diocese exclusively by its own officers, and not by provincial officers.

2768. Would you object to diminishing the surrogate's fees generally to 5 *s.*, and making that the uniform fee?
I think it would be a very great hardship indeed, in many parts of the country. I have not such a love for the principle of fees as to wish to advocate their extension to any extent; but as regards myself, I am a surrogate, and if I am to be paid at that rate, I must candidly say that it would not pay me to continue in the office; I mean not as regards the pecuniary value of the time, but to have to give up half an hour every now and then from very arduous work, would be a greater strain upon me than the money would compensate me for.

2769. What is the fee in your district?
The fee is 20 *s.* to the surrogate. I generally have about two in the course of the year, so that it does not matter to me much one way or the other; but in other dioceses it may signify very much.

2770. Is there any other point which you may wish to mention?
There are other matters to which I have given attention, but they have been spoken to by other witnesses very much better than I could speak myself. There are one or two minute points; for instance, the fees for collation to an honorary canonry are 6 *l.* 3 *s.* 6 *d.*, and induction, 1 *l.* 13 *s.* 6 *d.*, making altogether, 7 *l.* 17 *s.*

2771. That is in the scale, is it not?
That is in the scale.

2772. You think it very desirable that that should be revised?
I think it is extremely desirable that the whole scale should be revised. I do not

not know whether the question has been discussed by legal witnesses, how far the general fee system is illegal, but I know that in some cases which have occurred, I have heard a good deal of discontent expressed by the clergy. When the registrar's fees were established in the case of Shephard *v.* Payne, the court then held upon a custom, which went back, I think, so far as 1751, that that was sufficient evidence of prescription, and upon that ground the fees were upheld; but in another case, Bryant *v.* Foot, which was for the maintenance of an ordinary marriage fee (rather a high amount certainly, but an ordinary marriage fee), it was held that a custom, going back as far as 1804, proved no prescription, and while the registrar's fees were conceded to the registrar the marriage fees were refused to the clergyman.

2773. Lord *Hatherley.*] May not that have arisen from this: that a prescriptive fee is presumed upon evidence of many years past to have existed from the time of the prescription, but that the marriage fee was so high now that it could not possibly have been so high at that time?

The amount was 13*s.*; that was a large amount certainly, but still the custom of 1804 was held not to be valid, whereas the custom of 1751 was held to be valid.

2774. The one was rank, to use the legal term, and the other was not?

Yes; that point was, I believe, raised in the case. But many of the clergy and laity would think it ought to prevail also in the other case, with regard to the excessive amount of the registrar's and secretary's fees.

2775. *Chairman.*] The registrar's fees depend upon the recent statutory power of the Order in Council?

Yes, now they do.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Friday next, at Twelve o'clock.

# *Die Veneris*, 31° *Martii*, 1876.

PRESENT:

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|---|---|
| Lord Archbishop of CANTERBURY. | Viscount HALIFAX. |
| LORD STEWARD. | Lord Bishop of ELY. |
| Earl STANHOPE. | Lord WINMARLEIGH. |

THE LORD ARCHBISHOP OF CANTERBURY, IN THE CHAIR.

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MR. GEORGE PRINGLE, is called in; and Examined.

Mr. *Pringle.*

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2776. *Chairman.*] You are Secretary of the Ecclesiastical Commissioners?
I am.

2777. And you probably have looked at this Bill?
I have read the Bill through once or twice.

2778. Have you looked at those clauses which refer to the Ecclesiastical Commissioners?
I have.

2779. Perhaps you have some remarks that you would like to make on them?
The clauses appear to me to be 23, 37, 38, 52 and 58, which principally affect the Board and the office of the Ecclesiastical Commission.

2780. Would you kindly make any remarks that you have to make on Clause 23?
That is a clause which says that the Commissioners "Upon the receipt of the rules and orders settling the fees to be paid under this Act, or prescribing the regulations under which stamps are to be used, shall give directions for carrying such rules and orders into effect, and shall provide everything that is requisite for that purpose, with the assent of the Commissioners of Inland Revenue, so far as relates to the pattern, colour, and form of stamps and dies, and the making and impressing the same." It rather strikes me that that is an entirely new kind of business for the Ecclesiastical Commissioners to undertake; it is a class of business with which I personally have no acquaintance by experience, and it appears to fall entirely within the province of the Board of Inland Revenue. The Board of Inland Revenue, I understand, are entirely limited (with one small exception, that I have happened to notice), to issuing and selling stamps with a view to producing revenue to the Imperial Treasury; and I do not apprehend that that Board would be very well disposed to enter upon manufacture and sale of stamps contemplated by this Bill, although, of course, the duty might be imposed on them by an Act of Parliament. It appears to me that the Ecclesiastical Commissioners would find such work exceedingly foreign to anything that they have hitherto undertaken. It seems to involve dealing with something in the nature of cash. Now there is, practically, no custody of cash at the office of the Ecclesiastical Commission. Their treasurers are not charged, except to a very trifling extent, with the receipt of any monies in the form of coin, or notes, or even cheques; everything is paid to the Commissioners' account at the Bank of England, a permission to pay it in having been first obtained; the bank do not accept money for the Board's account except

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with the written permission of the Commissioners; it was necessary to restrict payments into the Bank of England in that way, because considerable periods, sometimes six months, have elapsed before we could find out whence very considerable sums of money came. Thus the treasurers of the Board do not deal at all with cash or valuables; they merely have to do with the bank books and the cheques, which they draw themselves upon the bank. I think the treasurers would find it inconvenient as well as novel to have to deal with these stamps. The precedent that I referred to, with reference to the Board of Inland Revenue, was an Act of the 33rd and 34th of the Queen, c. 97, s. 31. Section 31 directs that the Board of Inland Revenue shall pay over to the King's Inns at Dublin certain monies received by the Board of Inland Revenue for the sale of stamps in connection with the admission of barristers.

2781. Viscount *Halifax.*] By whom are those stamps issued?
By the Board of Inland Revenue.

2782. To whom?
To the persons who wish to buy them for the purpose of using them.

2783. Do the persons wishing to use them buy them direct from the Inland Revenue?
I believe that the Board of Inland Revenue do actually sell stamps at Somerset House; but the sale is generally effected throughout the country by means of about 400 agents that the Board of Inland Revenue employ; I have been informed so.

2784. Are those agents the ordinary stamp distributors?
Yes, I believe so; but I am speaking of a thing not within my own knowledge.

2785. *Chairman.*] Have you any further remark to make upon this particular clause?
Clause 30 says that "The accounts of the receipts and disbursements of the registrars appointed to sell stamps under this Act shall be audited, at the discretion of the Ecclesiastical Commissioners for England, by an auditor appointed by the said Commissioners." That seems to contemplate that the registrars shall keep accounts, and that some person appointed by the Commissioners shall go round to the registrars, and shall ascertain how many stamps they have sold, and make them account for the actual receipts. But that would seem to be rather a complicated arrangement; and it would seem desirable, if this Bill passes, to simplify it in some way, so as to make the actual sale of the stamps the test of what shall be received for them, not to have each purchaser or distributor of stamps account for what he has sold, but simply to be responsible for what he has bought. If the Commissioners have the sale of stamps and the receipt of the money, the best test of what the sale of stamps realises is the money they obtain by the sale; they would not part with the stamps till they had got the money, I suppose.

2786. *Lord Steward.*] Do you think that the registrars would acquiesce in that arrangement; do you not think they would feel the same objection, in their degree, that you feel?
Yes, I should think so.

2787. *Chairman.*] I do not know whether you are aware that this clause is taken from a previous Bill which passed through the House of Lords, and went through the House of Commons: "The accounts of the receipts and disbursements of the provincial and diocesan, and other ecclesiastical courts, ecclesiastical registries, and all other receipts and disbursements under the provisions of this Act, shall be audited, at the discretion of the Commissioners, who shall appoint an auditor of such accounts, and may remove such auditor, and fix the amount to be paid to him in respect of every such audit, which shall be defrayed out of the Ecclesiastical Courts Registry Fund." That states that it is at their discretion; it does not make it obligatory?
It appears to be at the Commissioners' discretion.

2788. *Lord Steward.*] Is not that a clause referring to an audit of accounts, and not to an audit of accounts of receipts and disbursements in respect of stamps?

I am

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I am afraid I have no kind of knowledge of the Bill which his Grace referred to; that was a Bill that never got through Parliament, and I never had any idea that it was so near getting through as to render it necessary to look at it.

2789. *Chairman.*] Would it meet your views if the Commissioners had the power at their discretion of auditing, but were not called upon to audit in all cases. You propose that the real audit should be by the means of the stamps issued; but cases might arise where it was necessary to inquire, and somebody ought to have the power of inquiring; would that obviate your objection?

I think I should be misleading the Committee if I put forward anything of my own view as being affirmative; mine is rather a negative position than otherwise.

2790. Now with regard to stamps themselves, you dislike the idea of money passing into the hands of the Commissioners; but the money might pass straight into the Bank of England?

My difficulty is rather this, I am not speaking of course from experience; the stamps are in the place of actual coin; a stamp is the equivalent and representative of money itself; postage stamps are now often used in giving change in small amounts. These stamps would form actual paper money, and there would be involved, of course, the custody in large amounts of something very like cash, which does not now take place in the office at all; there is no coin kept in the office, and no notes; a clerk from the Bank of England attends every day, and carries away any small sum which may have been received, such perhaps as a guinea or two paid as a fee on the assignment of a lease, which we are obliged to accept in that way.

2791. You think difficulties would arise from the Commissioners departing from their usual practice, and keeping that which, though not itself money, is in the nature of money?

That is what strikes me, and I think that is what the treasurers would feel.

2792. If it were to any extent that might be felt; of course you would not feel so much objection to a small amount being so received?

No, not so much objection.

2793. Then is there any other clause on which you wish to comment?

The 37th and 38th clauses appear to do away with the enjoyment by archdeacons of certain fees which are here termed procurations or synodals, provided the archdeacons shall be compensated by payments to be made by the Commissioners out of the funds to be created under this Act. I do not feel very sure whether the fees are to be done away with altogether, or merely the persons entitled to receive them changed from the archdeacons to the Commissioners. The obtaining of payment of those fees by Commissioners, who do not do any work for the money, would be probably more difficult than if the fees were demanded by a dignitary who was holding a sort of court, or doing something which represents the actual value of the payment made.

2794. Have you found that to be the case in the analogous instance of bishops' procurations?

Yes, to a very considerable extent.

2795. We have been informed that the Commissioners at present collect bishops' procurations and synodals?

They endeavour to do so; in some cases the bishops have given them away, or rather have declared that they shall no longer be collected.

2796. *Lord Steward.*] No longer be collected by whom?

That they shall no longer be collected by the bishops. In those cases the Commissioners have not attempted to revive the claim.

2797. *Chairman.*] Do you mean that in certain instances the bishops remitted the procurations and synodals some years ago?

Yes; I have no doubt myself that the Commissioners have a legal common law right to recover these fees. The Board have elaborate opinions from successive law officers of the Crown and other eminent counsel, that the Commissioners are entitled to them as a part of the Common Fund, and they did recover in one instance. The incumbent of one benefice seemed to be desirous of trying the question, and it was brought before the county court at Chester, and he was compelled to pay; I do not think that if the Commissioners chose to

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spend some little trouble and money on it, they would find a great deal of difficulty in recovering these bishops' fees; at the same time there would be a great deal of odium about it, and as the total amount represents only 700 *l.* to 800 *l.* a year, the Commissioners go on receiving them as far as they can at present, but I think their idea is to merge them in the livings where they are due from the person having the cure of souls of the parish; they are going to make them over to the incumbent, and instead of requiring him to pay the fee to the Commissioners they are going to make over to the incumbent the right to receive the fee he is now bound to pay to the Commissioners.

2798. So that it will be in the nature of a remission of the fees to the parishes?
Yes.

2799. And that is what you would recommend the Commissioners to do in reference to the bishops' procurations?
That seems to be the best thing to be done under the circumstances.

2800. Would it not be equally a boon to have a remission of the archdeacons' procurations?
I do not know a great deal about the archdeacons' procurations, but of course the remission of them would involve an increase of charge on the common fund.

2801. Can you estimate the amount of that?
I have not been able to form a satisfactory estimate, but I should think it is some thousands.

2802. Viscount *Halifax.*] Do you know what amount you receive at present from procurations and synodals?
In right of bishoprics, we are entitled to receive about 700 *l.* or 800 *l.* a year.

2803. What do you receive?
Not so much as that; it is very various.

2804. Do you receive anything from procurations and synodals payable to archdeacons?
No.

2805. Have you any means of forming an estimate what the amount of those procurations and synodals payable to archdeacons is?
I think we can form some general idea.

2806. What do you suppose it to be?
The total of the fees receivable by archdeacons would, I imagine, be some thousands a year.

2807. *Chairman.*] Would it be about 4,000 *l.*?
Probably 4,000 *l.*

2808. *Lord Steward.*] May I ask how you arrive at that conclusion; is not the bishop's visitation triennial, and he receives the procuration and synodals, which would otherwise be received by the archdeacon, therefore the amount due to the bishopric being 700 *l.* or 800 *l.* a year; three times that is 2,400 *l.*?
I am taking the average on a number of years; with the bishop it is one year with another. The total amount of bishops' procurations and synodals is about 2,000 *l.* a year; that is at certain intervals, not annually.

2809. That is to say, every three years?
The periods vary; in some cases the bishops' procurations are received annually at an annual visitation; sometimes only once in seven years.

2810. Every bishop is bound to visit his diocese every three years, is he not?
No.

2811. *Chairman.*] Could you mention any diocese in which it is not the custom?
I cannot state it off-hand, but I think there is one diocese where the visitation is only septennial.

2812. That is Norwich, I think?
And London is every four years.

2813. And

2813. And Canterbury every four years?
Yes. It should be understood, I think, by the Committee, that these estimates of mine are very much in round numbers.

2814. *Lord Steward.*] You have told us that, taking one year with another, it comes to about 800 *l.* a year?
That is my belief.

2815. Speaking roughly (there may be exceptions, but an exception on one side would correct an exception on the other), the bishops' visitations are held every three years; three times 800 *l.* comes to 2,400 *l.*
Yes; I say from 2,000 *l.* to 2,400 *l.* is about the amount.

2816. The annual amount received from procurations and synodals?
Not annual.

2817. The annual amount receivable?
The annual amount is about 700 *l.* or 800 *l.* a year, if you want to state it annually; the fees represent an annual income of 700 *l.* or 800 *l.* a year.

2818. *Chairman.*] Perhaps you would state to the Committee the mode in which you arrive at your calculation of 2,400 *l.*?
It is a general impression that I have from referring to Parliamentary Returns and Accounts in the office of the Commissioners.

2819. You, the Ecclesiastical Commissioners, have to make payments to archdeacons to raise their salaries to 200 *l.* a year; if you deduct the sum which you pay them from the total sum of 200 *l.* a year, it would give you a rough estimate of what the procurations and synodals are?
It is not quite safe to do that, because some of the archdeacons have estates, or the income represented by former estates, and some are endowed by canonries, so that the thing is more complex than it appears at first sight.

2820. All you can say is, that it is a considerable amount?
Yes.

2821. Bishop of *Ely.*] Have you any idea of the amount derived from lay impropriators from procurations and synodals?
No, I have not. In one diocese the average of the procurations and synodals, I think, comes to over 50 *s.*, but that diocese stands alone; it is more commonly the case that the average is nearer 5 *s.*

2822. *Chairman.*] Then in remitting the bishops' procurations and synodals, you have really made a present in some instances to rich livings, I suppose; or would you do that?
That has not been done at present; it will be further considered in each case.

2823. It would be so, would it not?
It might result in that in some cases.

2824. And even in some instances there would be a remission to lay rectors?
The Commissioners have not yet decided to do that.

2825. Would it appear to you to be fair, if the synodals and procurations to bishops are remitted, that those to archdeacons should also be remitted?
In the one case, legislation is involved; in the other case, the Commissioners have had to deal with a fact as it exists.

2826. You have had to deal with a practical difficulty, and settled it in a practical way yourselves, you mean?
Just so.

2827. Do you understand that it was the intention of the legislature that archdeacons should receive 200 *l.* a year?
Am I to understand the question to mean net, irrespective of all other sources?

2828. No; that they should have their income made up to 200 *l.* a year?
The Act is distinct on the subject, and it puts that amount as the maximum. It says, that no payment made under this section to an archdeacon shall have the effect of raising his annual income to an amount exceeding 200 *l.* a year.

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2829. Have you heard complaints from archdeacons that their incomes are under 200 *l.* a year?

Yes; in many instances they have been unable to realise the estimate of the average of fees which it was supposed they would receive.

2830. And have they made application in some instances to the Commissioners to pay them up to 200 *l.* a year?

In several instances.

2831. How have they answered?

In former years the Commissioners used to think it right to procure the passing of a supplementary Order in Council to remedy any such apparent wrong, but at a later period the law officers of the Crown took the view that having once passed an Order in Council under that section, the 34th of the 3rd & 4th Vict. c. 113, the board were *functi officio*, and that the power was exhausted; and the answer that has ever since then been made to every application of that kind has been a *non possumus*.

2832. But in the event of the legislature thinking it right to remit fees payable by the clergy in the shape of procurations and synodals to the amount of some thousands a year, would it appear to you fair that the archdeacons' incomes should be made up for this loss from the common fund, according to the principle already laid down?

I cannot imagine anyone thinking that an archdeacon is overpaid by the receipt of an income of 200 *l.* a year, or that he ought to suffer any diminution of an income below that amount.

2833. You are aware that this Bill proposes to do away with procurations and synodals?

Yes.

2834. Is there any other clause which you would like to call our attention to?

I see the 52nd clause appears to contemplate a very extensive and elaborate inquiry by the Board of Ecclesiastical Commissioners into what has been the annual amount received from fees and emoluments under the existing system by a large number of office holders, and it would seem that until that inquiry has been made and the results have been arrived at by way of decision on the part of the Board, the rules and orders specifying the amount of salaries to be paid on that basis cannot be issued.

2835. Do you think that would involve a great deal of trouble?

I have no means of judging exactly what the amount of labour would be, but I cannot help being apprehensive that it would involve a very serious amount of labour, and that it would be labour which could not be postponed but would be imminent, and that it might work a very serious disturbance of the capacity of the Board's staff for carrying on the existing business. That is exceedingly onerous at the present time; it keeps the staff fully employed, and involves a large amount of thought and anxiety.

2836. I suppose some such inquiry would be indispensable, if a change was made such as is proposed?

I suppose such an inquiry must be made as the basis of operations.

2837. Could you suggest by whom you think it ought to be made?

No, I do not know that I can suggest a body more capable of carrying it out than the Commissioners, if they had nothing else to do.

2838. *Lord Steward.*] You perhaps remember that in the Probate Act of 1857, compensation similar in character to that provided under this clause, was provided for the proctors in the ecclesiastical courts?

I know that as a matter of general knowledge.

2839. You do not know, perhaps, how long a time that took, or how long the investigation of each individual case required?

I have known several persons interested in that inquiry, and I have heard that it took over a twelvemonth, and that it occupied three special Commissioners very closely during that time. I think the present Chancellor of the Exchequer was one of the Commissioners.

2840. *Chairman.*]

2840. *Chairman.*] So that you apprehend that any plan for substituting salaries and compensating existing officers would involve a great deal of inquiry and trouble?

I cannot fail to apprehend something of the sort from that 52nd Section.

2841. You are aware that returns are called for by Parliament under an Act of last Session from the various officers; that would simplify the matter a great deal, would it not?

There is a voluminous return to Parliament, which has been published, and on which this Bill proceeds to some extent, I believe.

2842. And also that returns are now called for annually under an Act of last Session?

I was not aware of that.

2843. Is there any other clause which you would like to call our attention to?

There is Section 58. When this Bill was first laid on the table of the House of Lords by your Grace, the Commissioners directed me to refer it in a general way to their actuary, Mr. Yool, for any remarks he had to make; and he made a report to them which was in very general terms indeed, stating that he could not go very fully into the matter until he had a knowledge of what the rules and orders to be made under the Bill would be, because they are the essence of the whole arrangement. But he pointed out also, in addition to one or two things that I have mentioned before, that under the 58th Section there is no certainty that the common fund will ever be recouped the advances to be made under this authority. Of course the Bill provides that the common fund shall be recouped everything, but then that proceeds on the assumption that the receipts will exceed the advances from the common fund. But that is hypothetical only; there is no guarantee in the Bill that it shall be so; I do not know how you could provide such a guarantee.

2844. You doubt the security for your re-payment.

I am looking at the legal effect of the wording. It says that the fund shall advance such sums as may be necessary to provide for the payment of certain amounts which are not yet defined; and it leaves the recoupment of those advances to come from the receipt of moneys to be produced by the sale of stamps; and I do not see that there is any absolute certainty that the common fund may not be drawn upon in excess of the amount to be paid over to it.

2845. You mean in case of any failure of the fees?

Yes.

2846. *Lord Steward.*] Was not a course similar to this pursued in the case of the re-distribution of the episcopal incomes soon after the establishment of the Ecclesiastical Commission; the dioceses were re-arranged and the emoluments of the bishoprics were adjusted; and in the first instance the common fund advanced the annual payments required subject to being recouped by the episcopal estate?

I do not recollect that. When I first entered the office of the Ecclesiastical Commission the financial transactions under the 6 and 7 Will. 4, c. 77, which dealt with episcopal incomes and matters relating to dioceses, and the financial transactions under 3 & 4 of Vict. c. 113, which Act first constituted the common fund, were totally distinct.

2847. The episcopal fund was totally distinct from the common fund?

Yes; and your Lordship will see that it must have been so up to the year 1840, because the common fund did not come into existence until that date, while the episcopal fund had its origin in 1836.

2848. Perhaps I was wrong as to the date; but when the common fund was established it was kept distinct from the episcopal fund?

Yes; the two funds had never any connection with each other till they were fused; neither one was used to make advances to the other.

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2849. But before the two funds were merged considerable demands were made upon the common fund for episcopal purposes, were there not?
I am not aware of that.

2850. Then on what ground was the episcopal fund merged in the common fund?
Because I think the idea at that time was that the episcopal fund was solvent, and the common fund insolvent.

2851. But the outgoings of the episcopal fund at first were very much larger than the incomings; I mean, taking not any particular year, but an average of years, the outgoings of the episcopal fund were very much larger than the receipts, were they not?
I do not think that was the case; I do not think it could have been. Immediately after the fusion the episcopal fund, so to speak, which had ceased to exist as a separate fund, became heavily overdrawn, I have no doubt.

2852. Because at that moment the episcopal funds were being enlarged by the death of the prelates who held the rich sees?
No; the reason of its being overdrawn was, that in 1851 the Commissioners produced an Order in Council which stopped all the renewals of leases by the bishops; and the common fund and the episcopal fund then refused, had to go to the bishops, in order to provide the deficit caused by not renewing leases.

2853. And in consequence of that, the common fund for some time was unable to make grants in relief of spiritual destitution on so large a scale as was anticipated?
That was not the reason; the common fund, as regards anything like an available surplus, had come to a dead-lock in 1847. It was Sir Robert Peel's Act of 1843, which enabled the Board to go on constituting districts by spending, as if it were income, a capital sum of 600,000 *l.*, which was borrowed from the governors of Queen Anne's Bounty on the security of the reversion of the Commissioners' estate.

2854. Which has since been repaid?
Yes.

2855. *Chairman.*] You apprehend that there is not quite sufficient security for the repayment of the common fund out of the fee fund?
The words appear to leave the matter open, and I do not see how they can be made to provide that security.

2856. Have you seen any of the calculations that have been returned to Parliament as to the amount of the fees?
I have seen the return which has been laid before the Houses.

2857. Do you know to what it amounts?
I cannot say that I do; I have got an idea that it amounts to between 50,000 *l.* and 60,000 *l.*

2858. The most accurate calculation makes it 45,000 *l.*?
I know that the annual estimate was 43,000 *l.*

2859. *Lord Steward.*] Your doubt and alarm as to the prospect of the common fund being recouped would be very much increased, I presume, if the fees on marriage licenses were reduced or abolished?
The fees on marriage licenses, I have been told in conversation, and it seems to be agreed pretty nearly without question, form the great staple of these fees.

2860. And your alarm and doubt would be increased and intensified if you were told that the marriage licenses were about to be reduced?
Quite so; because I think that that is the great source of income.

2861. Earl *Stanhope.*] Can you say whether the Commissioners take objection to the offices abolished in Schedule A.?
I cannot speak for the Commissioners in any way. The Commissioners, as a rule, take no part in legislative movements as a board; they may consider a Bill of this kind at a sitting; but it is very seldom that anything comes of such a consideration, except the acquisition of information by members of the board, who,

who, generally speaking, are Members of the Legislature, either of one House or the other.

2862. *Chairman.*] You have mentioned certain clauses which directly affect the Commissioners; are there any others?
I do not think there are; none that strike me as being worth referring to.

2863. In fact these are the whole points you are anxious to bring before us?
That is all I have to suggest. I came here rather to endeavour to answer any questions the Committee wished to put to me.

2864. *Lord Steward.*] You have told us of some objections you entertain with regard to the practical working of this Bill; is there not another rather serious objection with regard to the actual space for offices of the Ecclesiastical Commission; supposing there were no difficulties in the way of administration, you have I believe recently enlarged your premises?
That might be worth consideration; the accumulation of papers alone rapidly consumes space.

2865. But still you have enlarged your premises up to the point required for your present work and duty?
Yes, the Board have endeavoured to do so.

2866. And you have no strength available in the office at present for any additional duties that may be cast upon them, such as are contemplated by this Bill?
The Commissioners' staff is very fully occupied at the present time.

2867. Earl *Stanhope.*] If the table of fees published last year were before you, would there be any insuperable difficulty in the Ecclesiastical Commissioners making the inquiry suggested?
I may say that I am totally ignorant of the table of fees referred to.

2868. That Blue Book which returns the fees in each diocese?
I do not think that my view would be materially affected by a consideration of those details. My view is general. Of course, anything in the way of work that the Legislature chooses to impose upon the Commissioners they and their staff will try to carry out; and they have had some experience of difficult work, and I think there is scarcely any sort of work which they are afraid of; but the quantity of work that can be carried through the office in a given time is, of course, limited.

2869. *Lord Steward.*] If the Commissioners have to undertake the duties imposed on them in this Bill, will they not have to add what is necessary to their present staff?
That inquiry into incomes alone, I should think, would involve a large amount of mechanical and other labour, for the mechanical labour would have to be directed, and the work certainly could not be transacted by the present staff, who are fully occupied already.

2870. In addition to that there is the preparation of the stamps; and, in addition to that, the general superintendence of the fee fund; all those are labours additional to what are now discharged in the office?
Yes, and with regard to the stamps not at all cognate to the general character of the Commissioners business.

2871. And are they cognate with regard to the fee fund?
I do not think there is the same want of similarity between the two sorts of labour in that case.

2872. *Chairman.*] Of course you cannot form any sort of estimate as to how many additional clerks you would require?
No.

2873. What payment would the clerks generally require for the mere manual labour; 30 *s.* a week?
Any estimate that I could give would, I fear, be of little use.

2874. What do you pay clerks for mere mechanical labour?
We have no mere mechanical labour in the office, unless that is to be assumed to be so which is paid for by folio, or by the hour. Attempts to make any other division of the labour in the Commissioners' office into classes to be described respectively as mechanical and intellectual, would, as I believe, be illusory.

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2875. *Lord Steward.*] Supposing this were entrusted to the Ecclesiastical Commissioners, you would not hand over the preparation of the stamps and the superintendence of the fee fund to persons paid so much for the folio, would you?

All the work done by our staff would require to be supervised by persons having experience. The manufacture of stamps, I imagine, would be done by Messrs. Delarue, the manufacturers for the Inland Revenue; it would seem most natural to employ the Government contractors.

The Witness is directed to withdraw.

MR. HENRY PEARSON GATES is called in; and Examined, as follows:

Mr. *Gates.*

2876. *Chairman.*] You are Secretary to the Bishop of Peterborough?
Yes.

2877. And Registrar of the Diocese of Peterborough?
Yes.

2878. And Registrar of the Archdeaconry of Northampton?
Yes.

2879. And Registrar of the Archdeaconry of Oakham?
Yes.

2880. So that you have considerable experience as to the subject treated of in this Bill so far as it relates to the Diocese of Peterborough?
Yes.

2881. And in your own person no inconvenience arises from the consolidation of these various offices?
Not the slightest.

2882. Do you think that it would be different if the offices were necessarily, and by law, united?
I do not think that they would be more efficiently worked than they have been.

2883. Do you think that any inconvenience would arise if it were said by law that your successor was to hold all the offices which you yourself hold, your not holding them by law, but accidentally as it were?
I hardly understand the question.

2884. Supposing, as this Bill provides, your successor in the office of secretary were to be also the Registrar of the Diocese of Peterborough, and Registrar of the Archdeaconry of Northampton, and Registrar of the Archdeaconry of Oakham, would any inconvenience arise from that?
Not the slightest, I think; I do not apprehend the slightest inconvenience; I should say it would be most convenient.

2885. This difficulty has been suggested, that some of these offices are held at the pleasure of the bishop, and others are held as patent offices?
Yes.

2886. Do you think that it would be inconvenient to amalgamate offices, the tenure of which is so different at present?
I think the officer of the united offices should not be removed at pleasure; because at the present time, if the secretary is a new person there is something for the registrar to fall back upon; he falls back upon his registrarship, and I think it would be very hard if he had not; I have had a very long experience; I first began by being private secretary to the bishop for five years, in the hope that I might be public secretary; after a number of years serving that office, when there was a vacancy in the registrarship, I naturally looked forward to a share of that office, but all that time I gave up a very lucrative business to do that work, and it would have been very hard upon me if at Bishop Davys' death,

death, the bishop who succeeded him should have thought fit to appoint a new person altogether; because I should have lost the advantages of my profession, and also the offices which I had given so much time and attention to.

2887. Then your argument rather points to the desirableness of the bishop's secretary being made a permanent officer?
I should say so.

2888. Bishop of *Ely.*] As well as the registrar?
Yes, with certain limitations; I do not say that a bishop ought to be prevented from discharging his secretary if there is reasonable ground. There might be very good grounds; he might get up a party in the diocese against his administration which would be ground reasonable enough.

2889. I thought I understood you to say that you considered it would be unjust if both offices were held during pleasure, so that a person might be instantaneously deposed from both?
Yes; but I should have considered it a very hard case before I obtained the office of registrar, if I had been deprived of my office of secretary.

2890. *Chairman.*] How many bishops have you served as secretary?
The present bishop is the third; 20 years I was with Bishop Davys.

2891. You have no difficulty in acting with any one of them?
Not the slightest. They were three different sorts of men too. I do not think that I have had half an hour's or a quarter of an hour's difference, with any one of them.

2892. Bishop of *Ely.*] But is not this conceivable; might not the single holder of the joint office become from various causes inadequate to the performance of the duties?
Yes. Perhaps you will allow me to make a remark on that point. It should be observed that the office of secretary, until the Plurality Act passed, was not a legal office; the registrar of the diocese really was the person who ought to do the work; but in every patent granted to the registrar in our own diocese, there is always a reservation for the bishop to appoint a private solicitor or notary for personal acts of his own. That is the way a secretary became first appointed. There may be local reasons. For instance, when I was first secretary to the bishop, the cathedral being at Peterborough, the diocesan registrar was at Northampton, the registrar lived there, and it was necessary that the bishop should have some one at Peterborough; so that he exercised the power that is in the other patent of appointing a person as secretary to receive certain emoluments from the registrar's office. That is how it was first established; I quite agree with you that if a person became old or incapacitated he should either be allowed to appoint a deputy or that the bishop should have the power of appointing a secretary, just in the same way as he has now; it is only another name now; the secretaryship and registrarship are almost one thing.

2893. In the present case, if the registrar, for instance, becomes incapacitated, the secretary being a different person, steps into a gap in some respects, and prevents a thorough collapse of the business of the diocese?
Yes.

2894. And *vice versâ*, if the secretary should be displaced, the registrar would stand in the gap; but now, if both the offices were held by one would there not be great danger, if that one became inadequate for duty, that the whole business of the diocese would fall to the ground, because both secretary and registrar would disappear from the active list at once?
There would be that danger if there was not a power given in the Bill to make an arrangement either by a deputy, or otherwise.

2895. Would you give to the bishop the appointment of a deputy?
Yes, with his approval. It is now virtually so; the registrar never could appoint a deputy registrar without the bishop's approval, and I should still recommend that the bishops should have that power.

2896. Who is to be the judge when the appointment of a deputy becomes essential; it is quite conceivable that the registrar might fight off appointing a deputy; the bishop might feel a strong necessity for it, and yet the registrar would

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would have a great temptation to put off the appointment of a deputy registrar as long as possible, would he not?

I hardly know, there might be so many suggestions on that point; but I think it is a point that might easily be cleared up, from age or infirmity. I do not think myself that there would be any difficulty if the bishop had a distinct power of appointing a deputy in case of incapacity.

2897. The bishop being judge of the incapacity?

He might be the sole judge of that, I think.

2898. You would not leave it to the registrar to be the judge of the time when he required a deputy?

No. I should be quite willing to leave it to the bishop.

2899. *Chairman.*] Independently of any difficulty about the tenure of the office, there is no difficulty about the discharge of all the duties of these offices proposed to be united?

I have not found the slightest.

2900. They may be discharged in conjunction with other offices; as for instance, such as that of chapter clerk?

Yes, I am chapter clerk and registrar of the Probate Office.

2901. The duties even of all these united offices are not overpowering?

No, there is a great deal of responsibility, but you have a great deal to watch and arrange and plenty to occupy one's time and attention.

2902. Bishop of *Ely.*] The registrar should be resident in the cathedral town, I believe?

He should be resident where the bishop is, within call, certainly.

2903. In cases where the bishop has no residence in the cathedral city, would it be desirable that the registrar should reside in the cathedral city?

I think so. I think the registrar should be in the cathedral city.

2904. Do you, from a glance round England, believe that in all the cathedral cities there would be found a solicitor of sufficient standing, and proper altogether to fill the joint office of registrar and secretary?

I think so; and if he could not be found in that city some one would be tempted to come; I think the bishop might tempt some one to come, if he did not find a person there.

2905. *Chairman.*] You must have a large aquaintance with the clergy, of course?

Yes.

2906. Do you know, from conversation with them, whether they find ecclesiastical fees press heavily upon them?

I never knew any complaint till the last two or three years in this diocese.

2907. What do you think has caused that?

I think that the clergy themselves have caused a great deal of the irritation. I am told sometimes by the churchwardens, "We always paid, and we should like to, but our parson tells us not to pay till these matters are settled."

2908. You think the churchwardens would be willing to pay, but the clergy put it into their heads not, as I understand you?

I think, if they were instructed to do so, they would be willing.

2909. That is as to the churchwardens' fees; but as to the fees of the clergy themselves, could you mention any that appear to be oppressive?

I really do not think that they thought them oppressive at all in this diocese.

2910. And do they now think them so?

I do not think they really do now.

2911. Was there not a gentleman who objected strongly to the payment of promotions and synodals, and wrote to the newspapers on the subject?

He objected to the principle, but I believe his mind was perfectly at ease after he had examined the thing thoroughly.

2912. And he was satisfied that it was all right, you think?

Yes.

2913. Viscount *Halifax.*] Do you know at all what amount of procurations and synodals he paid?

I think at the bishop's visitation it was, on an average, 5 *s.* 6 *d.*; the archdeacon's procurations and synodals are, on an average, 11 *s.* 3 *d.* a rector; and they amount to 144 *l.* a year in the archdeaconry of Northampton, which includes now Oakham. When his Grace asked me whether I was the registrar of the archdeaconry of Oakham, I ought to have stated that Oakham was taken out of the archdeaconry of Northampton only last year.

2914. *Chairman.*] The clergy pay large fees on induction and institution?

Yes; but not excessive.

2915. Have you heard any complaints about them?

I certainly have not heard them.

2916. You do not think the fees excessive?

My experience has been, that they have paid them with pleasure in reality; certainly the greater proportion have done so.

2917. Bishop of *Ely.*] Do you think that the dissatisfaction of the clergy, where it does exist, springs from their not discriminating between fees proper and other charges upon the freehold which they hold?

Certainly.

2918. Such as land-tax, loans, and such matters?

Yes; they do not discriminate between what is a tax upon the property they have obtained and the fee for obtaining the property; and, in my experience as a solicitor, I can say that a person never can enjoy an income of 200 *l.* or 300 *l.* a year in any way without paying very much larger fees than the clergy pay to obtain a preferment of 200 *l.* or 300 *l.* a year.

2919. And I suppose it is true that a person could not get into a freehold any other than an ecclesiastical benefice for so little legal cost as he gets into the benefice for?

Any other freehold would be much more expensive.

2920. *Lord Steward.*] But any other freehold would be for his heirs for ever; whereas the benefice enjoyed by the parson is only for his life at the utmost?

If you have a lease of 21 years you pay a much larger amount than a clergyman does for presentation and institution.

2921. Bishop of *Ely.*] Do you think that the dissatisfaction has increased since the Dilapidations Act has come into operation?

I think so.

2922. So that, again, an incoming incumbent does not discriminate between the fees with which he is chargeable for getting into the living and the expenses which come upon him under the Dilapidation Act for getting the property in good order?

No, they do not discriminate; they look to the general expense of getting settled.

2923. Earl *Stanhope.*] Have you a permanent registry office in your case?

Yes, a very good one.

2924. How is it sustained?

By the fees; I put it in order, and pay a rent of 10 *l.* a year; it belongs to the bishop; I have a lease of 21 years under the bishop. (*The Witness handed in a Return of Fees received in the Diocese of Peterborough in the year* 1874.)

2925. *Chairman.*] Is this a return made annually?

It was made in 1874.

2926. Who pays the expense of the printing?

I have paid all that; I have a good many copies, and I furnish anyone who wishes it with a copy.

2927. Earl *Stanhope.*] The ordinary fittings, the stationery, and so on, do you supply that?

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It falls entirely on the registrar and secretary. Of course the two offices are worked cheaper if they are held together, because there is not a separate office or separate clerks; a great deal that is done by one clerk can be done for both offices.

2928. You reside in Peterborough?
Yes, I was born in it.

2929. With regard to your registrar's work in Northampton, how do you manage there?
Formerly the Registry Office was at Northampton, but when the Probate Office was established, there was no further reason then for the bishop's documents being at Northampton when he lived at Peterborough. The Government had a new office for the probate work, and a registry for the bishop's business was not wanted at Northampton.

2930. *Lord Steward.*] Do you think it very desirable that the diocesan record should be kept in the cathedral city?
Generally so; I think, generally speaking, they should be where the cathedral is.

2931. Have you considered Clause 40 of the Bill?
I have not looked at the Bill; I did not come up expecting to give evidence about it.

2932. I should like just to call your attention to Clause 40 of the Bill. Clause 40 provides that "Her Majesty may, by Order in Council, made upon the recommendation of the Lord High Chancellor, the Lord Chief Justice of England, the provincial judge, and the archbishops and bishops who are members of Her Majesty's Privy Council, or any three of the said persons, one of them being the Lord High Chancellor or the Lord Chief Justice of England, make rules and orders;" and then I wish to call your attention to the second sub-section: "For ensuring the proper custody of records and other documents and papers placed in the custody of the registrar of any province or diocese;" that would give these high officers the power of ordering the removal from the diocese of the diocesan records; should you consider that a desirable arrangement?
Would that be construed as taking them out of the diocese?

2933. You would object to their being taken out of the diocese, I gather?
I think so; I think they would be better in the diocese; but I doubt whether that is intended to take them out of the diocese. I think a clause of that sort is really essential; whether that is the precise way it should be done I do not know.

2934. Do you think it essential that there should be a power of moving the records out of the diocese?
Not out of the diocese.

2935. Do you think there should be a limitation that they should not be moved out of the diocese?
I think it would be advisable to add that.

2936. *Chairman.*] Will you read Clause 49. "Within one year after the avoidance of the office of registrar of any commissary, archdeaconry, or peculiar ecclesiastical jurisdiction, the records and other documents and papers preserved in the registry of such commissary, archdeaconry, or peculiar ecclesiastical jurisdiction shall be transferred to the registry of the diocese in which the jurisdiction of such commissary has been exercised, or in which such archdeaconry or peculiar ecclesiastical jurisdiction is locally situate, unless it shall otherwise be directed by the rules and orders; and the cost of such transfer shall be fixed by the rules and orders, and shall be paid out of the Ecclesiastical Fees Fund. Until such transfer, regulations may be made by the rules and orders for insuring the proper custody of such records and other documents and papers. Nothing contained in this section shall be construed to extend to the records and other documents or papers in the custody of the dean, or of the dean and chapter of any cathedral or collegiate church." That partially obviates the difficulty?
I do not think there is any objection to that clause.

2937. Bishop

2937. Bishop of *Ely*.] Do you think the clause to which your attention has been called gives power to them to direct them to be transferred to another place than to the diocesan registry?

No; I should have read it that might insure the power of there being a proper registry in the diocese. I think there might be cases where there is no registry at all, where they might be in the hands of a private gentleman. They were so in my case till the last few years; they were in my private possession; and I thought it was to insure there being a public registry that the clause was framed.

2938. *Lord Steward*.] You think it would be inconvenient if the diocesan records under the rules and orders were removed to London?

I think the public would think so.

2939. With your experience of diocesan business, would it not be very inconvenient?

Yes, upon the same ground as with regard to the wills.

2940. Then, with regard to the tenure of office, I think I understood you to say that it would be rather hard if the registrar was removable at the bishop's pleasure?

Yes, and especially so as a matter of course at the vacancy of a see. I do not apprehend its arising at any other time.

2941. That hardship would be that you would not get such able and superior men to hold that responsible office as you would otherwise if they were subject to this possible hardship?

I think it would prevent very good men accepting it very often.

2942. Though there may be a practical inconvenience in the two offices of registrar and secretary being held by the same person, yet you think it would be a serious inconvenience if the offices were so united that both should be removable at the bishop's pleasure?

I think so. I mentioned just now the vacancy of the see; I had a reason for saying that; I think it is perhaps more often done then, before, perhaps, a bishop is acquainted with his officers, than at any other time; but I think very often when he has made his acquaintance with the officers of the diocese, he has no wish whatever to remove them. It is often done just at the vacancy of the see without any motives except changing the men, from the fact of not knowing them.

2943. Have you formed any opinion as to the salary that your successor would have under this Bill?

There is a certain sum lumped for the different registrars, I think.

2944. Considering that under this Bill, supposing it passes into law in its present shape, the duty of the diocesan registrar will be united with that of bishop's secretary, and also registrar of the various archdeaconries of the diocese, do you think that an emolument of 800*l*. a year would be sufficient to enable the duties to be discharged as efficiently as they are now?

Amply, I should say.

2945. That being salary, in lieu of fees?

Yes; I would not object to commute to-morrow.

2946. That being a salary in lieu of all fees, and the office being maintained out of that emolument?

Yes.

2947. Is the Diocese of Peterborough one where there is much contentious business?

We have not had a single contentious case since I have been registrar, so as to call forth a judgment.

2948. *Chairman*.] You have the clerical chancellor?

Yes, we have a clerical chancellor.

2949. Does he sit in court?

He would.

 2950. But

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2950. But he has nothing to do?
He has certain very important duties to do, but they are of a non-contentious character. He has never been called upon as a judge to determine anything.

2951. You heard with regard to the evidence of the Diocese of Chester? I heard a portion of it.

2952. It was represented that the non-contentious business was discharged in the court at Chester; that is not the case in your diocese?
No.

2953. Where is it done in your case?
At the rectory at Uppingham; I forward drafts of faculties and other documents, &c., for his perusal; he attends the bishop at his visitation, and he has occasionally acted for an archdeacon.

2954. So you think the business is just as well done in the chancellor's house as it would be in court; that particular sort of business?
Yes; but of course the visitation is a court.

2955. Recurring to the fees once more; the fees on presentations are sometime alleged to be very heavy?
Yes; Messrs. Day & Hassard wrote me a letter this morning which they wished me particularly to put in; and I think the large amounts that are paid to the Home Office and the Attorney General upon Crown livings may press heavily; certainly they are very much larger than those paid in the case of livings with private patrons, or ecclesiastical patrons. I see in one case mentioned in the letter they amount to 25 *l.* 11 *s.* "On the Reverend James Dodd, M.A., being recently appointed to the living of Newborough, we had to pay for him, to the Home Office 7 *l.* 13 *s.* 6 *d.*, to the Attorney General 8 *l.* 18 *s.* 6 *d.*, to the Presentation Office (Great Seal) 9 *l.*; total 25 *l.* 11 *s.*"

2956. What was the value of the living?
That was 250 *l.*; then there was no land tax or any other charge upon that living.

2957. *Lord Steward.*] There would be first fruits, would there not?
No first fruits in that case.

2958. *Chairman.*] Do you make yourself responsible for the statements in that letter which you have alluded to?
I cannot say that I do; it was written by Mr. Hassard.

2959. You do not know of your own knowledge that these fees were paid?
No.

2960. Do you remember in your own experience any living, of which the Crown was patron, in which there were large sums to be paid?
No; in regard to the Crown livings, I may say that the clergy have this in their favour, that they are not so quickly filled up; I think they have larger arrears to receive.

2961. *Chairman.*] About sequestration of livings during a vacancy, do you think that desirable?
I think it most desirable.

2962. Why?
Partly to arrange for the duty that some one should be at once responsible for the duty of the Church; our chancellor's rule is that we are to send the sequestration at once; but the fees paid are only a small amount.

2963. What is the fee altogether?
One pound sixteen shillings and eight pence, of which 13 *s.* 4 *d.* goes to the chancellor; and with regard to the mandate of induction, the total cost of that is 1 *l.* 7 *s.* 6 *d.*

2964. Viscount *Halifax.*] The fees of sequestration would be payable by the churchwardens, I suppose?
I always charge the incumbent when he takes the incumbency.

2965. Do

2965. Do you issue an actual sequestration, without receiving any fee at all?
We receive it back again when the new incumbent pays his other fees.

2966. The sequestration is issued to the churchwardens on the vacancy?
Yes.

2967. Do you issue that document without the payment of any fee?
Without any immediate payment.

2968. *Lord Steward.*] Would you explain what is the advantage of a sequestration. Why could not the churchwarden, knowing that the living is vacant, provide for the performance of the duty without the issue of a formal sequestration?
It is not the law, and the issue of this explicit document saves much correspondence on the part of the bishop and his officers.

2969. Leaving aside the legality of the practice for the moment, what is the advantage of it?
It is a matter for regularity of discipline; and it also provides a part of the chancellor's and registrar's income, &c.

2970. During the vacancy of the living the profits cannot be collected; does the sequestration in any way affect the receipts of the profits of the livings?
I think it does. I have had letters from people to know where to pay the income of the living, surplice fees and others.

2971. Does the sequestrator receive those surplice fees?
He may do so.

2972. Does he do so?
Yes.

2973. Who is usually appointed sequestrator in your diocese?
The churchwardens; the rural dean is now added, by Bishop Magee's particular wish.

2974. To whom are those surplice fees due?
To the new incumbent.

2974*. Then as regards the tithe rent-charge and any permanent endowment, the sequestration is of no value as regards that portion of the emoluments of the living?
The new incumbent would be legally entitled to them, no doubt.

2975. Then anybody paying them to anybody else would have to pay them over again to the new incumbent?
Yes, if they have not paid them to the sequestrator.

2976. Then, as far as I gather, the only advantage of sequestration to the clergy is that it reserves for them the surplice fees?
That is part of the advantage; it prevents waste and dilapidation occurring.

2977. What other advantage occurs?
The sequestrators receive any emoluments which become due during the vacancy.

2978. Did you ever hear of a sequestrator receiving any portion of the tithe rentcharge?
I do not think so.

2979. Viscount *Halifax.*] Would he not be entitled to receive any tithe rentcharge becoming payable during the time of the sequestration?
He would be entitled, but it very often saves confusion to do it otherwise.

2980. Do sequestrations generally issue in your diocese on a vacancy occurring?
Always, unless we know that the living is going to be filled up within a week or so.

2981. *Chairman.*] Has anyone any legal authority to take charge of the benefice during vacancy without sequestration?
I think not.

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2982. To appoint a curate, for instance?
The bishop would have, but he communicates his wishes through that document.

2983. And who would be responsible for the payment of the curate's salary if there were no sequestration?
He would have to wait.

2984. And to hope that the new incumbent would pay him?
Yes.

2985. But there would be no obligation on the new incumbent to pay him?
I think there would be.

2986. Even without sequestration?
Yes, with a license.

2987. Viscount *Halifax.*] Do you issue sequestrations without applications from anybody on the part of the parish?
Yes.

2988. *Chairman.*] It is stated here in a book called "Blunt's Book of Church Law," that "unless churchwardens are thus empowered" (that is to say, by the sequestration), "they have no legal authority to take charge of the benefice during a vacancy," and the case of Prout *v.* Cresswell (1 Lee, 36) is cited; do you suppose that that is a true statement?
Yes.

2989. *Lord Steward.*] How do you know that a benefice has beome vacant?
We generally have a note either from the rural dean or the churchwardens to inform the registrar, or we see it in the newspaper.

2990. Do you issue a sequestration on the faith of what you see in the newspaper?
In the "Times."

2991. Bishop of *Ely.*] Strictly, the churchwardens ought to pay the sequestration?
It is their duty to apply.

2992. *Chairman.*] How long might a living remain with out being filled up?
There are two in the diocese of Peterborough at the present time that have been vacant more than six months.

2993. How does it happen?
They leave it for an Order in Council to unite them to another living.

2994. During a year the living has been under sequestration?
Yes, for more than six months.

2995. And who have received the tithes?
The churchwardens have; at least they ought to do so, under the bishop's authority.

2996. Viscount *Halifax.*] I see by the Paper which you handed in that the Reverend George Marsh is apparently joint registrar with you; is that so?
Yes; he is alive now.

2997. Were you and he appointed joint registrars?
I am his deputy registrar for the diocese, but am principal registrar of that part of it that is in Leicestershire, thereby becoming joint registrar with Mr. Marsh for the present diocese.

2998. *Chairman.*] You are deputy, you say?
Deputy for a part, but principal registrar to the archdeacon; and it has always been the custom in this diocese to appoint the archdeacon's registrar the bishop's registrar.

2999. Viscount *Halifax.*] Is this return you have put in a complete return of all the fees?
All the official fees relating to my office.

3000. It applies not only to your office?
To the chancellor and the archdeacons.

3001. Have you any objection to put that Return in, for the benefit of the Committee?

Not the slightest. (*The Return is handed in,* vide *Appendix.*)

3002. *Chairman.*] Have you anything else you wish to say?

One remark more about those sequestrations. I think where the hardship has arisen is this. I know it used to be so in Leicestershire before it was added to the diocese of Peterborough; the churchwardens used to, what they called, take out sequestrations, and that was rather a heavy matter; but to cure that inconvenience, it was laid down that there should be a very moderate fee charged, and that the sequestration should go as a matter of course, and not be so expensive to any individual clergyman, as it sometimes was under the old system, because they used to give a bond. Now there is no bond taken, and the sequestration is not officially relaxed.

3003. Who made these alterations?

That has been the practice in Northamptonshire always. The same practice was adopted for Leicestershire when it became part of the diocese. I am inclined to think, in the diocese of Canterbury, the Registrar of Canterbury has adopted our plan; I think our chancellor explained how it was done. It was made a rule that it should be always done, but only a very moderate payment for it.

3004. Is there any other matter that you would like to bring before us?

I should like to say that I think, in any reform, an uniformity of practice, and rules for every diocese, most desirable.

3005. Throughout the whole of England?

Throughout England.

3006. As to the fees, do you mean?

As nearly as possible. I must say, I think the first beginning of the objection to fees in the Diocese of Peterborough was from the doing away with a secretary altogether in the Diocese of Lichfield; because we border on Lichfield.

3007. Is there no secretary in Lichfield?

There is a secretary in Lichfield, but he is paid entirely by the bishop; the clergy there are not charged with any fees, except patent fees and registrar's office fees.

3008. Bishop of *Ely.*] Are you acquainted with many other dioceses besides that of Peterborough?

I was articled in the diocese of Gloucester, where Bishop Monk was; Mr. Holt was the secretary and registrar there.

3009. Do the usages and practices, both as to fees on visitations and other matters, vary very much in different dioceses?

The visitation fees do.

3010. And the marriage license fees?

Yes.

3011. Therefore, there is a very great variation in different dioceses?

In those two particulars.

3012. Without very great roughness and dissatisfaction, do you think it would be possible to compress all dioceses into one uniform type?

I think it is not impossible.

3013. And you think the advantage of doing it is so great as to balance the disadvantages?

I think the advantage would be immense.

3014. Do you think that applies to the two provinces?

I think so. I think they should be as nearly alike as the circumstances will allow of.

3015. You are aware that there are very great differences in the northern province in many cases?

Yes; for instance, marriage licenses are a very lucrative source of emolument in the north; but that has become very little in the southern dioceses.

3016. *Chairman.*] Is there any other point which you wish to bring before us?

No.

The Witness is directed to withdraw.

The Reverend MICHAEL GIBBS is called in; and Examined, as follows:

Rev. *M. Gibbs.*

31st March 1876.

3017. *Chairman.*] You are a Member of the Convocation of the Province of Canterbury, and were a Member of the Committee on First-fruits and Tenths, and concerning diocesan offices and fees?
Yes.

3018. That Committee made several recommendations; do you find any of those recommendations embodied in this Bill?
I do.

3019. Would you mention some?
If your Grace would allow me to go through the Bill clause by clause, I can point them out. There are several which are not in, which I was going to suggest. May I at the commencement say a word to prevent an erroneous inference being drawn from an answer given on Wednesday. It was stated by the witness that no new canon had been made in recent years. The answer was given by a member of the Convocation of York; but certainly in the province of Canterbury some new canons have been made. On the 29th of June 1865, in your predecessor's time, Archbishop Longley's time, some new canons were made.

3020. Was that with regard to godfathers and godmothers?
That was one; but also with regard to the canons on Subscription and Simony.

3021. Were these new canons considered to be valid?
Yes.

3022. With regard to godfathers and godmothers, was that so?
I do not know whether that canon has received the Queen's assent, but the others have.

3023. The one with regard to subscription you mean?
Yes.

3024. That followed the Statute did it?
It made the canon keep accord with the Statute. I forget which had the Royal Assent first; but they were nearly about the same time. I was afraid lest the inference should be drawn that no new canon had been made anywhere.

3025. We do not understand you as proposing that this whole subject should be dealt with by canon rather than by Statute?
No, I say nothing about it. I observe in the third section of the Bill before the Committee that this Act is confined to England. I have heard it said that England, as defined in some Act, includes Wales; but to prevent mistake, it appeared to me, that if it was here stated, it might prevent a misunderstanding, Wales being in the province of Canterbury. May I venture to state that the qualification contained in the Bill for the vicars general, and for the chancellors does not appear to me to be quite wholesome. A barrister of 10 years' standing, or seven years' standing, differs very much from the qualification as expressed in the 127th canon; and if this goes forth as the only qualification for those offices, it would tend to increase an evil which has been felt, I believe, for several years, viz., that there is very little encouragement now for the study of ecclesiastical law; and that race of professional gentlemen appears to be going out very fast, and if this Bill were to pass, it appears to me it would be the deathblow of it.

3026. Should you propose that the restriction should be removed which, under the Bill, prevents clergymen from holding these offices?
I think the canon allows clergymen to hold them.

3027. You do not think it desirable to restrict it, as I gather?
I would leave it open to those who appoint to these offices to find the most qualified man they can, whether a layman or a clergyman.

3028. You would allow a clergyman to hold the office?
If he is the most qualified man in the opinion of the appointer; but the qualification

qualification in the canon includes both a good life and conversation, and also a knowledge and practice of the civil and ecclesiastical laws.

3029. You are satisfied with those provisions in the canon?
I prefer them to those in the Bill.

3030. *Lord Steward.*] In the case of laymen being appointed, you would, I suppose, consider it a very proper qualification that they should be barristers?
Yes, but I think something more than barristers; they should know something about ecclesiastical law, and, as the canon says, "be zealously bent to religion."

3031. *Chairman.*] The canon is not repealed by the Statute, is it?
No; but I apprehend the Statute would overrule it.

3032. You do not think it is supplemental to it?
No. I would venture to say with regard to the 9th section and the 12th section, that is, as to combining the offices of the registrar of the bishop and registrar of the archdeacon, that it combines the offices, but it does not seem to specify that the registrar must serve or obey the archdeacon, and do the duties of that office. Now, whereas in Schedule C., it provides that he shall do the duties of the registrar, of the commissary, and also those of the bishop's secretary, but it does not say that he shall do the duties of the archdeacon's registrar.

3033. You think something ought to be introduced to make it plain that he has to do them?
Yes; in Schedule C. he should be required to do the duties of the office which he is to hold. With reference to Clause 17, I observe there that the deputy may be appointed by the person who appoints the principal; but there seems to be no provision that his appointment should be filed in the office of the Ecclesiastical Commissioners, and yet his salary is to be deducted from the salary of the principal. I do not see that those who pay the principal his salary will know what deduction they must make for the deputy's salary.

3034. They would not necessarily have any knowledge of his existence, you think?
They would not necessarily have any knowledge of it.

3035. You think that some clause should be introduced, so that it should be known that the deputy has been appointed?
Yes, and to know what sum they are to deduct. With regard to Clause 18, I venture to think that the declaration under Schedule D. (perhaps it is a mistake) is not so intelligible as the words of the canon are.

3036. What are the respective words?
In Schedule D, it says, "and that I will discharge the duties of the said office to the uttermost of my understanding, without respect or favour of reward." In the canon it is "or reward."

3037. That must be a misprint in the Bill.
And yet I have seen one of the manuscript books which is signed by several officers who have made this declaration, and there it is "of," but I do not understand it with "of."

3038. Perhaps it is a misprint in the Act of Parliament from which this is taken?
In the Canon 127, it is "or" reward, "shall deal uprightly and justly in his office without respect or favour or reward." Then in Section 20, it appears to me that the surrogate to be appointed must be appointed by a great number of persons: "No surrogate shall be appointed after the passing of this Act, except by the Master of the Faculties to the Archbishop of Canterbury, and by the vicar general, and official principal of the Archbishop and province of Canterbury, and by the vicar general of the Archbishop and province of York," and so on.

3039. You think the "and" ought to be "or"?
Yes; it goes on, "and by the chancellor of a diocese, or by any of such persons."

3040. You think it ought to be "any one of such persons."
Yes.

Rev. *M. Gibbs.*

31st March 1876.

3041. *Lord Steward.*] At the present time some surrogates are appointed by archdeacons.

I believe so.

3042. Do you see any reason why the archdeacon should be deprived of that power?

No; but I think in accordance with the Report that his Grace alluded to from the committee of the province of Canterbury, the offices of surrogate and rural dean should go together, and that would require that he should be appointed by the bishop.

3043. But you find no provision in this Bill relating to the offices of rural dean and surrogate?

No, nothing; it is one of the things which I should venture to suggest might be desirable. Then the surrogate as well as the rural dean would be the bishop's officer. I do not think it desirable that the bishop should appoint one officer, and his chancellor another officer, when I think both these offices might be well held together, and they would be more immediately under the bishop. With regard to Clause 21, I venture to suggest that the word "future" might be put in, because otherwise it appears to have retrospective force, and would make all appointments now held void, unless they had been made according to the Act. It says, "All appointments made contrary to the provisions of this Act shall be to all intents and purposes void." If it were "all future appointments," I think it would be better.

3044. *Chairman.*] The Act does not come into force till a certain day?

But after the passing of the Act, I am afraid it might have a retrospective force. On the subject of Part 4, on paying by stamps, I have nothing additional to add to what I have heard said by other witnesses. I have tried to see how it would work. I am afraid it would cause a great deal of correspondence to be necessary, and thereby cause delay. I was not prepared to see how it could be carried out unless the registrars, who are to be the stamp distributors for the diocese, were to invest a sum of money and buy a sufficient stock of stamps to work for a year or two at a time.

3045. If that is so, it would require the investment of capital on their part, which would not be desirable; you do not think that it would have the effect of checking any charges such as we heard of for mileage, and so on.

I have not experience enough to enable me to judge; but I could not see my way clear on that part of the Bill. With reference to Part 5 and Section 29, there is a provision of what shall be done with the balance at the audit if there is a balance of cash in hand; but I have had to search the Bill to find what is to be done if the balance is negative. Now it appears that Clause 58 provides that the Ecclesiastical Commissioners may advance money out of their common fund in the event of the balance being negative, and charge 4 *l.* per cent. for the loan of the money till it is repaid out of the Fee Fund.

3046. *Lord Steward.*] Is "may" the wording of the clause?

No, it is "they shall advance." Then they are to charge 4 *l.* per cent. for the loan; but one of the witnesses has stated, that there seems to be no security to prevent there being always a negative balance. But I venture to say that it appeared to me that that was the meaning of the 7th sub-section of Clause 40; that if this negative balance payable exists, then according to this 7th sub-section the funds available for paying salaries can be altered; and therefore it does away with the security for the continuance of the payment of the salaries which had been previously fixed; if the money is not forthcoming it is to be deducted from those salaries, for the rules and orders are for the following purpose: "For fixing the salary or other sum of money to be paid to any person under this Act, regard being had to the nature and extent of the duties performed by such person, and to the funds available for the remuneration thereof."

3047. *Chairman.*] You do not object to that; do they?

It does away with the security that the salary will be continued.

3048. Do you think that they are entitled to a secure salary in lieu of a fluctuating income from fees?

It appears to me that if the salary is fixed at 100 *l.*, and if at the annual audit there

there is not cash enough in hand for that, there would be a re-arrangement of the monies.

3049. You do not think that unfair, do you?
It appears to me a question whether the fees should not be so altered as to secure the salaries.

3050. You are aware that these officers have no security now as to the sum they receive, and that it is not the intention of the Bill to give them a security which they do not now possess?
It appears that the salaries must suffer in the event which I have mentioned.

3051. *Lord Steward.*] At the present moment ecclesiastical fees are recoverable except in the case of churchwardens, are they not?
I doubt if they are recoverable if there are no parochial funds in hand.

3052. The churchwardens' fees certainly are not, because the churchwardens are admitted and the fees afterwards demanded, but other fees are recoverable; procurations are recoverable, are they not?
I believe so.

3053. *Chairman.*] But whether recoverable or not, they are fluctuating as to their number, and the chancellor's income in the same way?
Yes, they are so at present.

3054. Therefore the chancellor's income is not a salary but a fluctuating number of fees?
Yes. I have called attention to this point in consequence of what I heard in evidence. It does appear to me that Sub-section 7 of Clause 40 has a provision that will meet the case of the fee fund not being able to meet its liabilities.

3055. Namely, what?
Namely, by reducing the salaries.

3056. That was put in in order to secure that no more money shall be paid out than has been paid in?
Then with regard to the 34th Clause, the payment of deputies, which is to be deducted from the salary, it is, "There shall be paid to any surrogate performing any formal act under Section 20 of this Act, such sums as may be prescribed by the rules and orders, and such payments shall be deducted out of the salary of the person on whose behalf such surrogate performs such act." It does not say by whom the surrogate is to be paid, but only that it is to be deducted from the salary; one would suppose it to be paid by the Ecclesiastical Commissioners; but if I were a surrogate, I think I should feel doubtful as to where I should apply for that money.

3057. *Lord Steward.*] You mean, for instance, where the surrogate attends instead of the chancellor?
Yes; and for any duties that the salary is to cover.

3058. *Chairman.*] You think it ought to be paid by the Ecclesiastical Commissioners?
Yes.

3059. Clause 29 is, "The said Commissioners shall also pay out of the ecclesiastical fees fund all salaries and payments directed to be paid to any person under this Act, except where otherwise expressly provided." It seems to be intended that it shall be paid by the Ecclesiastical Commissioners?
Then with regard to Clause 36 where it is provided that the sum to be paid to the surrogate shall be smaller in London than elsewhere, I would venture to remark that it is an accusation brought against some of the London clergy, that there is too much encouragement for country people to come to London to be married. I apprehend that this provision would open them to such a charge.

3060. That is the case now I suppose, that payments are smaller in London?
Yes; and a great many country people do come to be married, and this makes an additional pecuniary reason for so doing. Then with regard to Clause 37, I understood it as really doing away with procurations to archdeacons, until I heard what one of the witnesses said here this morning, that it seemed to be

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doubtful whether it did not give the title to the procurations to those who paid salaries to the archdeacon, that is, to the Ecclesiastical Commissioners; I understood that it really did abolish the payment of procurations by the clergy.

3061. I think that is the intention?

That is a bonus for which I, on their behalf, would venture to express gratitude; because it is a little set-off against the great increase of payment which they have had to make now for the last 40 years. Their revenues are taxed more to rates; ever since the first passing of the annual Act for the exemption of stock-in-trade, their rates have been doubled, and the working of the Tithe Commutation Act has also tended to increase the amount they have to pay for rates considerably. From both those circumstances, the taxes on their revenues have been so increased, that any fee taken off must be considered as a set-off on the other side. I am very glad that they are to have that easement, if it can be fairly allowed.

3062. *Lord Steward.*] But the procurations and synodals have no relation whatever to the rateable value of the living?

No, certainly not; if they had, it would be a greater boon in many livings. With respect to the 38th Clause, that the Ecclesiastical Commissioners are to pay to archdeacons an equivalent for what they lose; I do not see how that is to be ascertained. But perhaps I shall only be trespassing on the time of the Committee, not being an archdeacon. I dare say those you have heard have called attention to this fact; because the 52nd Clause empowers the Commissioners to have returns respecting all amounts received for which a compensation is required; but I do not see that the 52nd Clause applies to archdeacons. I should like to know if it does. "Salaries of existing holders of certain offices," is the title of the clause, but I cannot see that it applies to archdeacons.

3063. *Chairman.*] You think there would be a difficulty in ascertaining exactly how much the archdeacons have received?

The only other way is to take their word for it. I daresay it would be true; still I do not see why they should be left out. Then we come to Clause 40. I observe there, that when these six high officers meet to make rules and orders, it is made necessary that the Lord Chancellor or the Lord Chief Justice should be one of them. I would venture to suggest (it appears to me important) that the provincial judge should be one of them, who has more to do with these various offices, and that his presence and assistance in drawing these rules and orders should be necessary, if anybody's is made necessary, whereas his presence is not made necessary. I would also venture to suggest that, as the Bill seems to provide that rules and orders, and all the actions of these six high officers, are to be laid before both Houses of Parliament, and therefore, before the House of Commons, it is worth remarking that there is not one of the six who is a Member of the House of Commons, not one therefore able to say a word for, or against, the document lying on the Table; and it appears to me that as the laity are a good deal interested in these rules and orders, it would be desirable that there should be somebody who is a Member of the House of Commons, who would be able to answer questions about them.

3064. The same must be the case with a good many who are interested in the documents which are laid before the Houses of Parliament?

Perhaps it is; but with regard to this, which is to be of national application, it seems to me that that point should be considered. In page 13, line 25, the Bill says, "All rules and orders shall be laid before each House of Parliament within 40 days after the same are made, if Parliament is then sitting, or if not, within 40 days after the then next meeting of Parliament, and if an Address is presented to Her Majesty by either of the said Houses," and so on.

3065. But how are the rules themselves made?

By these six high officers.

3066. Are they not ratified by an Order in Council?

Yes; but before they are ratified by an Order in Council I would suggest that they lie a certain time before Parliament; and if Parliament pleases to address Her Majesty, she might stay her hand from ratifying them.

3067. The

3067. The Order in Council you will see comes before that?
I understand that, but should prefer that the draft is laid before Parliament first.

3068. Now in Clause 39, it is said that a meeting is to take place of certain persons?
Yes.

3069. Would it, in your opinion, be a good thing that proctors in convocation should be members of that meeting, as more directly representing the parochial clergy?
I think they could speak a good deal for the feelings of the clergy in their diocese; and in that sense their evidence might be important. Then at the top of page 13, Clause 40, the latter part of Sub-section 4, is this, "Persons holding any of the offices directed by this Act, to be united to any of the offices mentioned in Schedule (B) to this Act"; the fees that they are to receive are to be regulated by rules and orders. I should like to ask, for the sake of some of the clergy, whether that will at all empower the rules and orders to alter the curate's license fee of 10*s.*, which is fixed by the 1st & 2nd Vict. c. 106?

3070. It is intended to include all?
That Act of Parliament has regulated that particular fee for curates.

3071. That is actually in an Act of Parliament?
Yes; that section is not repealed by the Bill, I think. It repeals Section 131, but I think it is Section 82 to which I refer.

3072. There is a general clause which says, "Any other enactments whatsoever"?
Then, with regard to Clause 41, it really re-enacts a part of a clause which is put in the schedule to be repealed, namely, 1 & 2 Vict. c. 106, s. 131, but it does not re-enact the provisoes. That repealed section says: Provided that there be no fee exceeding the fee which for 20 years next preceding the passing of this Act shall have been usually taken for the same thing in the diocese of London. It repeals, therefore, that sort of limitation which the Act of 1 & 2 Victoria has for London. I venture to ask if that might be looked at.

3073. Some of the fees in London, you said, were very low; 2*s.* 6*d.* for a surrogate?
Yes; but a 20 years' existence of a fee in London seems to have carried a privilege in the clause which is to be repealed by the Bill.

3074. But did you not say that the fees in London ought to be the same?
That was a different fee; a fee for marriage licenses.

3075. *Lord Steward.*] One was a fee upon the laity, the other upon the clergy?
Yes. Then in Clause 42, with regard to churchwardens, the man who applies to be admitted is to "produce a certificate of his appointment, signed by the chairman of the vestry at which such churchwarden was appointed." Now, my little knowledge of the working of Easter vestries is this, that if the clergyman is not present, the existing churchwarden becomes the chairman, and if he is re-elected he will have to sign his own appointment; and this rather tends to go against re-electing the same man. The question might arise whether he could be elected for the future year, he being the churchwarden who will have to sign his own appointment; and I am one of those who think that keeping a man in office is sometimes a good thing, and I should be sorry that this Bill should be used at all against that practice.

3076. *Chairman.*] It is not necessary for him to take the chair, is it?
No, but the practice is that he does. If there was a proviso at the end, "That nothing in this clause shall prevent any churchwarden from being re-elected at the vestry or re-appointed by the incumbent," it would make it clear then.

3077. Who certifies now that a man has been elected churchwarden?
The out-going churchwardens put in the names in their presentment.

3078. Then that is very often the same person?
In many instances the same. Sometimes there is only one change; the junior one year becomes the senior for the next.

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3079. *Lord Steward.*] At the present moment the churchwardens are required to attend in person?
Yes.

3080. This clause substitutes a certificate, in lieu of attendance, by the outgoing churchwardens?
Yes; It appears to me that the phrase "shall be admitted" leaves it an open question, when and how; but he must produce this certificate; and my great fear is this: that if he produces a certificate signed by himself as a witness to his own election it might be construed to prevent his re-election; and therefore I would suggest the proviso, "That nothing in this clause shall prevent any churchwarden being re-elected to the office or re-appointed." Then, at the end of Clause 52, which is a very long clause, I find this: "Persons receiving salaries under this section shall pay thereout such remuneration as they may think fit, to the deputies appointed by them." "As they may think fit." Are they therefore to say whether or not they will have a deputy (and a deputy may be very much needed), but that the salaries are to be what they think fit. If they say, "I will only pay a penny," that is virtually saying, "I will not have a deputy."

3081. *Chairman.*] What persons are they that are referred to; they are the persons that are now in office?
It is the holders of certain offices mentioned in the schedule, which, as I just now pointed out, did not appear to include archdeacons.

3082. These are the existing officers?
Yes.

3083. Then the object of the clause, I suppose, is to put no burthen on them which does not exist at present?
But it appears to me to militate against their having a deputy, because even if they were required to have a deputy, they could say, "I will only give him a penny." I would leave out the last three lines of this clause, or else specify some regulating power of these deputies' salaries. They seem to be entirely left now to the will and pleasure of the person who engages them.

3084. These are the persons at present in office?
Yes.

3085. The view being, not to lay any further burthens upon them?
I really think that, for the good of the church, there are instances in which those who now hold office ought to have a deputy. With regard to a few things that do not appear to be in the Bill, I have already mentioned that I thought it was desirable that the surrogate and the rural dean should both be appointed by the bishop; and, if he pleased, those offices should be held by the same person. The rural dean, I may say, now acts as the bishop wishes, to carry out his orders; he has no remuneration, no payment of his expenses. If he were surrogate as well, it might help to pay his expenses. I would venture to call attention to one or two other points. With regard to all fees paid to officers, there seems to be no provision for settling the fees due to the clergyman for things for which he may be, or has been, in the habit of having fees. Now, in this Bill there might be some provision with regard to marriage fees for the clergyman. It is a point which, I think, wants very much attending to. I believe that the marriages solemnised in church (I have heard it said) went down 10 per cent. last year, and I believe that the fee has a good deal to do with that. By statute law the fees for marriages, elsewhere than in church, are all regulated, and I think we want in some way or other the matter looking at, that the Church should not lose the hold of her people, because the Church fees are heavier than the State fees. In fact, I should be very glad if some arrangement could be made whereby the clergy shall be relieved from some of their fees that they have to pay themselves; and then that, on the other hand, they should perform certain offices without fees. I think, with regard to the question of those fees that the clergy are entitled to receive, it would be a very wholesome matter if that could be included in this Bill, and if the rules and orders could regulate them.

3086. Was that included in the matters committed to the Committee of Convocation, of which you were a member?

Yes; the managers of the Diocesan Fund, according to the recommendation of the Committee, would have power to regulate all those things if the bishop required them so to do. Then another class was, fees at the erection of monuments and tablets, fees that the clergyman may take. Instead of his being asked, as now, what he will charge, if there were a scale of fees showing what he was authorised to take, it would take off the sharp edge which now cuts between him and his parishioners sometimes.

3087. *Lord Steward.*] You would add to that the fee for a brick grave?

Yes, all those sorts of things.

3088. *Chairman.*] Do you think it would be desirable (take the case of St. George's, Hanover-square, where the clergyman's income entirely depends on the fees), to have a statutable fee which should be invariable. If there was a statutable fee, of course nobody would pay more or less?

I think a *plus* fee, or a free-will offering, might be given, as it is now.

3089. Are you aware that if a bishop officiates at a marriage, ten guineas is the charge, and if a dean, a certain sum, but that the income of the incumbent of St. George's, Hanover-square, entirely depends upon his fees?

I did not know these facts; but it struck me that the Bill made no provision for fees to be payable to the clergy for any of these things. It is very desirable that the subject should be taken in hand by somebody in authority. There was one point that was in that report which I believe has been put in to this Committee, the Report of the Convocation Committee on officers and fees, and that was to endeavour to unite the work of institution and induction, that the deed of institution should carry with it a title to the temporalities.

3090. Bishop of *Ely.*] Do you wish to do away with the ceremony of induction?

I would unite the two.

3091. *Chairman.*] Which would you abolish?

I would abolish neither; I do not know whether your Grace has seen it, but we have a Report in the Lower House of Convocation upon that subject, and a form of service drawn up for induction and institution.

3092. Do you mean that, taking the Bishop of London, for example, you would require him to attend in church the institution of every clergyman?

No; but it might be done by himself or his commissary; but there is no provision, I think, in this Bill touching upon that point. Then there is another thing which it appeared to me might be provided, and that was in the case of a court being held. In the Public Worship Regulation Act it is provided that the bishop shall have the same power in summoning witnesses that he has in his Consistorial Court; but what that power is seems to be a matter of great doubt; he may call them, but there does not seem to be any power of compelling them to come, short, I suppose, of some sentence of ex-communication; but whether this Bill would not give an opportunity of defining what that power is, is a question for consideration.

3093. In fact, you would introduce a good many things into the Bill that are a little alien to its object?

I do not know that the last thing I have mentioned is alien, because the Bill preserves the courts.

3094. You have now gone through the Bill generally; there has been some question raised about the expenses of the election of proctors for convocation; who pays them at present?

We assess ourselves for the expenses of convocation; I had meant to draw attention to that point.

3095. Do the candidates at present pay the expense of the election?

Not in London; I have been elected many times, but it never cost me a farthing in any way.

3096. Who pays?

I do not know.

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3097. Not the bishop?
I do not know; not the candidates, not the proctor. The 40th Clause says, "For settling the fees to be taken at the election of a proctor to convocation." I want to know, taken from whom?

3098. They appear to be taken in some dioceses, because we had it in evidence; but your evidence is that in London there is no fee paid at all?
No.

3099. At all events, you do not pay anything?
It never cost me a farthing; but to a proctor in convocation the work of convocation costs somewhat; I do not know whether this Bill on fees could provide for the expenses in convocation being met.

3100. These expenses are of very various kinds, I suppose, are they?
We pay the officers of convocation; we pay all our printing bills also.

3101. That is rather a serious item, is it not?
Yes; the last several years I have had to move in the Lower House that the sums paid should be 4 *l.* per dean, 3 *l.* for each archdeacon and chapter proctor, and 2 *l.* for each clergy proctor; that has been the payment we have made among ourselves.

3102. For the printing of the speeches?
In the Chronicle, and printing reports of committees.

3103. That chronicle stands to convocation in the same relation as Hansard to the Houses of Parliament?
Yes, I suppose so.

3104. The expense of Hansard is not paid out of the public funds, I think?
For all expenses incurred with the approval and in carrying out the directions of the Upper House their Lordships pay a third; that includes the Chronicle.

3105. You would not propose that that should be paid out of the fee fund, would you?
If it could be, we should like it much.

3106. Do you think that the clergy would approve?
The members of convocation would approve.

3107. Is there any other point you wish to draw attention to?
No.

3108. *Lord Steward.*] With regard to Clause 28, and the following clauses which provide for the formation of a large ecclesiastical fee fund, and then to the Clause 40, which provides for the formation of rules and orders, that contemplates a great central body, a great central organisation; do you think that is the most desirable method of legislating on the subject?
The Committee of Convocation of which I was chairman thought it would not be; they would much prefer that it should be managed diocese by diocese.

3109. It was thought that the circumstances of each diocese are various, and each diocese would manage its own affairs much more satisfactorily than a great central body?
So it was represented to us; and, in particular, the cases of a Welsh diocese and a London diocese were put in contrast.

3110. *Chairman.*] Then you do not agree with Mr. Gates on that point?
Our committee did not.

3111. *Lord Steward.*] Then, with regard to the Rules and Orders provided for under Clause 40, does not it appear to you to have rather the effect of transferring the duties, which are now performed by diocesan officers, to this central body?
Yes.

3112. And you consider that objectionable?
Yes. It was represented in our committee that the experience of one general fee to be paid by churchwardens throughout the country, is that the system has been injurious; that the fee of 18 *s.*, which all churchwardens are now asked to pay, shows that although that fee may suit London it does not suit Wales; that, in

in fact, it injured the collection and created bad feeling, and it was thought that the same might be the result of other general orders for the whole of England, if the peculiar circumstances of each diocese are not taken notice of. It occurred to me, with reference to that point, that this Bill is an enabling Bill, as far as Rules and Orders are concerned; that these Rules and Orders need not be for the whole of England; but that it empowers these six high officers to make Rules and Orders, which may be partial in their operation, or general. It appeared to me an open question by the Bill.

3113. *Chairman.*] At all events you think it desirable that they should have that power?

Yes; that there should be some elasticity, so that, with reference to a Welsh diocese, it might not be the same rule as would apply to this diocese.

3114. *Lord Steward.*] Do you think that persons would pay fees more readily if they were to be administered locally than if thrown into a great central fund in London?

Yes.

3115. Do you think there would be any difficulty in forming in each diocese a diocesan fee fund?

According to the statements made in our Committee (the only evidence I have on the point) there appeared to be none.

3116. Your own experience is chiefly confined to the Diocese of London?

Yes.

3117. You have been in the Diocese of London all your life, have you not?

London and Ely.

3118. But there is a general concurrence of opinion, as far as you know, that there would be no difficulty in forming a diocesan fee fund?

Yes.

3119. Lord *Winmarleigh.*] In every diocese?

There was no difficulty mentioned at our committee meeting, and the members came from different dioceses.

3120. *Lord Steward.*] And if there were any deficiency in a diocesan fee fund, there would be less objection on the part of churchmen in the diocese to make up the fee fund to the required amount, by subscription or otherwise, than there would be to paying fees into a general fund in London?

That is what I think from what evidence I have heard; I may also state this, that that seems to be the inference to be drawn from this, that with regard to Church purposes, I believe more money is raised through there being a local or diocesan society for some particular work than otherwise. I will illustrate that in this way; the National Society for the Promotion of Education is a general society with head-quarters in London for such work throughout the whole of England; but when I lived at Cambridge, we formed a local society for doing the same work for the county of Cambridge, and we undertook that in the case of all who subscribed to the National Society, or wished their money to be sent over to it, it should be sent; that we would be their collectors; but that in the case of those who pleased to give to us for local purposes, we would apply the money in that way; the result was that more money was contributed for that work than was then being given in that county for the National Society. We formed the Cambridge Board of Education, which established national schools in many of the villages, which never would have been established, I believe, unless we had had the separate local branch doing the same work; and I believe that that was far more popular than any movement in aid of a general society in London, and we find the same with regard to the Church Building Society.

3121. And if a diocesan fee fund were established, it would be much more easy, would it not, for the managers of such a fee fund to adjust the duties of the various diocesan officers, and to adjust the corresponding remuneration, than it would be for a central body consisting of such high personages as the Bill describes in Clause 40?

In the committee of which I was chairman, it was thought there could be no question about it, that it would be much more easily and successfully worked locally.

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3122. *Chairman.*] But you do not think that fees will become at all more popular by being imposed within the diocese, do you?
They never are popular.

3123. The Dilapidations Act was a diocesan body for appointing fees?
Yes.

3124. I do not know whether your experience is the same as mine, that no fees are more unpopular than those which are imposed for this diocesan body?
That Act certainly wants amendment in many particulars; but clergymen whom I know prefer the system of that Act far beyond the old one.

3125. *Lord Steward.*] Are not the fees in the Dilapidations Act all fixed by persons directly appointed by the bishop, that is to say, the archdeacon and the rural deans?
Yes.

3126. And not by those in any way elected by the clergy?
No, except in Exeter.

3127. Bishop of *Ely.*] Is it not the fact that in some dioceses the Dilapidation Act works very smoothly, and they are contented with it?
I have had returns of about 1,400 inspections, of which above one-sixth were at the request of the incumbent. It appears therefore that according to that, incumbents are not afraid of inviting inspection. At the same time there are a great many who make suggestions for amending the Act; but several have reported that, speaking generally, they consider the Act to be satisfactory in its working.

3128. *Lord Steward.*] You expressed an opinion that keeping a churchwarden in office was a good thing. I suppose you would apply that to a bishop's registrar; you would think it desirable that he should hold office during good behaviour?
Yes.

3129. *Chairman.*] You do not agree, then, with the Committee of which you were chairman on that subject. It seems to have been recommended by the Committee that the registrar and apparitor should hold the respective offices during the bishop's pleasure?
We wished to unite the bishop's secretary with the registrar; we thought as one was a patent officer and the other an officer at will, it would be well that they should be put on the same footing. We therefore recommended that the registrar should hold his office during the bishop's pleasure.

3130. And you thought that the best way of altering it?
We thought that the bishop ought to be free to have his own legal adviser.

3131. And have you changed your opinion on that?
I do not know that I have sufficient information before me to form an independent opinion. When it was put to the vote the majority carried it, of course.

3132. Bishop of *Ely.*] The opinion of the committee was that the secretary should hold during pleasure?
Yes.

3133. Lord *Winmarleigh.*] Supposing you were to take the registrar by himself without regard to the bishop's secretary, would you recommend that the registrar should be appointed during pleasure?
I think he should hold office during good behaviour.

3134. You do not see any inconvenience in a fresh registrar being appointed on the succession of each bishop?
I would not have it necessarily so.

3135. Are there no advantages that you see in a permanent registrar in a diocese over those of one appointed during pleasure?
I do not think I have sufficient evidence to form a judgment; my own experience

ence with regard to having to do with the business of diocesan registrars is very small.

3136. *Chairman.*] You remember when Mr. Shephard was deputy registrar in London?
Yes.

3137. And the registrar lived in France?
Yes, but Mr. Shephard was to all intents and purposes the man with whom we had to do, as if he had been the real registrar.

3138. Is there any other point which you wish to bring before us?
No.

The Witness is directed to withdraw.

Ordered, That the Committee be adjourned to Monday next, Twelve o'clock.

# *Die Lunæ, 3° Aprilis,* 1876.

PRESENT:

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| Lord Archbishop of CANTERBURY. | Viscount HALIFAX. |
| LORD STEWARD. | Lord Bishop of ELY. |
| Earl STANHOPE. | Lord HATHERLEY. |
| Earl NELSON. | Lord WINMARLEIGH. |

THE LORD ARCHBISHOP OF CANTERBURY, IN THE CHAIR.

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Mr. EDMUND CHARLES CURREY, is called in; and Examined:



3139. *Chairman.*] YOU have been for some years Deputy Registrar of the Faculty Office?
I have. My partner, Mr. Moore, is joint Deputy Registrar.

3140. The Faculty Office is that office which has to do with the Archbishop's jurisdiction throughout England?
It is, in certain matters.

3141. Would you state what these matters are?
The matters in modern times are limited chiefly to marriage licenses.

3142. Special marriage licenses, do you mean?
The ordinary and also the special; notarial faculties and dispensations for holding benefices in plurality. There are some other minor details, but those are substantially the matters of jurisdiction.

3143. Under which head do you class the conferring of degrees?
That is also another head.

3144. Now, you say that it comprises marriage licenses ordinary as well as special; are there many such marriage licenses applied for?
A great many; it is, with the Vicar General's Office, the chief office for that purpose. Its jurisdiction extends into the other Province, of York.

3145. Then do I understand you rightly that people beyond the Province of Canterbury often apply for marriage licenses from the Faculty Office?
No, it is an unusual occurrence; they do not often apply; but, theoretically, the jurisdiction extends to the Province of York.

3146. So that common licenses, as well as special licenses, for persons residing in the Province of York, may be issued from the Faculty Office?
They may.

3147. But are not often so issued?
They are not often so issued. It is more a matter of historical interest than anything else. By the Act entitled "The Act concerning Peter's Pence and Dispensations," the power of the Pope in reference to ecclesiastical grants was superseded, and the Faculty Court of the Archbishop of Canterbury created for the purpose of dealing with such matters in future; and, as the Pope's power embraced the whole of England, so did the newly, constituted court. A further effect of this has been to extend the power of the court to the colonies and foreign dominions of the Crown. Notarial faculties for foreign parts are granted, and under them a large portion of foreign commercial business is transacted.

3148. Now, what part does the Master of the Faculties take in these matters?
The Master of the Faculties is exactly in the position of a judge of another court;

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court; he acts in any cases of difficulty, and gives directions in such matters; but, as long as the business is purely executive, the registrar transacts it without reference to him.

3149. But, in case of any difficulty, do you refer to the Master of the Faculties?
We refer to the Master of the Faculties, and he is responsible for the propriety of the business.

3150. As the vicar-general is for the registrar in his office?
Yes.

3151. Who is the registrar of the Faculty Court at present?
Lord Canterbury.

3152. Has he long been in possession?
For very many years; I think since the year 1828.

3153. Was he sole registrar when first appointed?
He was, and is sole registrar.

3154. He has always been sole registrar since he became registrar?
Yes.

3155. The present Lord Canterbury?
Yes.

3156. His brother never was registrar, I think?
His brother, I think, never was registrar.

3157. Then by whom was he appointed?
He was appointed by the archbishop of that day, Archbishop Manners Sutton, I think.

3158. And in what year?
In 1828. He was very young at that time; he was then the Honourable John Henry Thomas Manners Sutton, and his Lordship has since been governor of several Colonial dependencies. Upon the death of his brother, about five or six years ago, he succeeded to the viscountcy.

3159. Have you any idea what the value of the office of registrar of the faculties is?
I have precise knowledge.

3160. What is it?
I think it was from 1,300 *l.* to 1,400 *l.* a year; but the Blue Book shows, in which it was returned the other day.

3161. That is on an average of two years?
On an average of three years.

3162. *Lord Steward.*] You said "was;" do you mean "is?"
Was, and is; it fluctuates a little.

3163. *Chairman.*] Then during the whole of that time you or your firm have transacted the business of registrar; is that the case?
I think I may say yes, in this sense; I have myself transacted the business since the year 1849; my predecessor in the office, Mr. Moore's father, was deputy registrar before that time. I think his period of service extended back over the whole time of Lord Canterbury.

3164. Was he connected with the Mr. Moore who was registrar of the Province of Canterbury?
No; that is a different family.

3165. It is a mere accidental concurrence of names?
Yes; it was only a fortuitous circumstance that the names were the same.

3166. Is it right to ask how the profits are divided?
Yes; roughly speaking, it is about a third that we receive; that is only very roughly stated, because it varies on each instrument.

3167. You receive about 500 *l.* a year?
Yes, about that.

3168. Lord *Hatherley*.] The entire work is done by you?
Yes.

3169. *Chairman*.] Then I understand that you are apprehensive that if this Bill become law, and any unfortunate circumstance should remove Lord Canterbury, you would be entirely thrown out?
I should. The operation of this measure would be this. At present it protects Lord Canterbury's position as principal registrar, because, as your Grace is aware, the temporary measures prevail until a vacancy occurs; therefore, the principal registrar is protected; and he is further protected in this way, that if the future salary appointed to him under the measure falls short of his previous earnings, he is protected by a subsequent clause giving him compensation for the difference. During such time as Lord Canterbury shall remain principal registrar, I have no right to complain, of course; but upon a vacancy the Faculty Office is amalgamated with the Office of the Provincial Court of Canterbury; other officers would transact the business and take the fees, and I should be altogether without protection.

3170. Would the same thing happen under the present law in the event of the death of Lord Canterbury, and the archbishop of the day thinking it right to appoint a person to do the duty himself?
My answer to that of course is this, that in modern practice it has prevailed that the deputy registrar, the working man, has succeeded to the principal registrarship. It was so in the case of the vicar general; Mr. Dyke was appointed to the principal registrarship, and is principal registrar now.

3171. Who appointed him?
Archbishop Howley. In the same way when the Reverend Richard Watson died, who was principal Registrar of the Consistory Court of London, your Grace, acting upon that principle, appointed Mr. Shephard, the then deputy, to be the principal; he has been since that time principal, and is so now. And that sort of *spes successionis* is of course very strong now; and we should have indulged it except for this measure; it is by this measure that the *spes successionis* is entirely removed from us. But of course I at once admit that I have no sort of feeling of grievance until Lord Canterbury's vacancy; if he survives me, and Mr. Moore, *cadit quæstio*. Otherwise it would seem extremely hard that I, who have transacted the public business of that office for upwards of a quarter of a century to the satisfaction of everybody so far as I know (Sir John Dodson, Dr. Lushington, and Sir Robert Phillimore, the late masters, expressed approval of the way in which I discharged it), should be left unprotected by the measure.

3172. You are not Registrar of the Arches Court?
I am not.

3173. Who is Registrar of the Arches Court?
Mr. Shephard is registrar; but he is very old and infirm, as your Grace is aware, and Mr. Waddilove acts therefore as his deputy.

3174. He has only been appointed for a few years?
Since the Public Worship Act came into operation, or just before it.

3175. Should you consider that he had a claim of the same kind as yourself?
I think so.

3176. Although he has only been there for three years?
There is the difference of term of service, of course. I should put his claim upon other grounds. He has been instrumental, under Lord Penzance, in bringing into operation that Act; and I may perhaps here mention, that I had the opportunity of rendering, I think, some service to Lord Penzance, at your Grace's suggestion, in the preparation of the Rules and Orders under that Act of Parliament; and I think I may add, that I have the authority of Lord Penzance for saying that the claim which I am now urging, is one which he would look upon favourably so far as his opinion goes.

3177. Is there not some clause in this Bill with reference to deputies who have served a certain number of years?
The word "deputies" does not appear in the Bill, I think, with reference to this claim.

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3178. Have you read Clause 48 of the Bill, "Any person who has before the first day of January one thousand eight hundred and seventy six been admitted as a proctor of any ecclesiastical court in England shall be qualified to be appointed to be the registrar or one of the registrars of a province or diocese, notwithstanding anything to the contrary contained in this Act. Any person who has held the office of deputy registrar of a province or diocese, either solely or in conjunction with one or more person or persons, for the seven years next before the passing of this Act, shall be qualified to be appointed to be the registrar or one of the registrars of such province or diocese, notwithstanding anything to the contrary contained in this Act. Any person who has held the office of secretary of any archbishop or bishop, either solely or in conjunction with one or more person or persons, for the seven years next before the passing of this Act, shall be qualified to be appointed to be registrar or one of the registrars of the province or diocese of such archbishop or bishop, notwithstanding anything to the contrary contained in this Act." That would not meet the case; nor would it refer to the actual abolition of your office by the mere operation of the Act?

No; as to qualification to hold the office, of course I have qualifications abundantly without that clause.

3179. Then you are here in order to urge the justice of some consideration being paid to your case?

Yes.

3180. Is there any other point which you wish to bring before us?

I think I ought to add, with reference to the suggestion that your Grace threw out about Mr. Waddilove's being in the same position, probably my Lords may think that the clause which I am urging would introduce a large company of claimants. But that is not so; I have been carefully through all the existing officers; it would not apply, as your Grace is aware, to any officer who, being registrar or deputy registrar, succeeds to the office either of principal registrar or secretary; and it would apply only to such deputy registrars as are deputy registrars at the passing of this Act. Therefore, going through the whole list of officers, and analysing them, with those exceptions, I reduce the whole possible number of claimants to half a dozen, if so many. Those who, being secretaries, continue secretaries, or succeed to secretaryships, would be out of the question altogether. It is only those who are altogether set on one side by the operation of the measure.

3181. But might not a gentleman who is at present deputy registrar and secretary complain if he is put on a salary as secretary, which is less than he is at present in receipt of as deputy registrar and secretary?

The answer to that, of course, is two-fold. He would have no show of complaint if his appointments are subsequent to 1835, the suspending Acts; because the compensation clause in this measure in that fulness only relates to those ancient officers who were appointed before those suspending Acts.

3182. You consider that a fair distinction?

I think it is an obvious distinction.

3183. Whether fair or not?

I will go a little further, and say I do not think it at all unfair.

3184. Bishop of *Ely.*] Do I understand you rightly that if the principle of compensation is admitted into the Bill, there are only about six persons holding any office which would entitle them to compensation, who might be expected to come forward with a claim of this kind?

That is my opinion, under this claim which I am urging of deputy registrars.

3185. Do the six refer only to deputy registrars. If the principle of compensation in one case is admitted, of course it must be admitted generally; have you any idea as to how many persons altogether would apply for compensation if the principle of compensation were once admitted?

I think I can answer that distinctly. I think it works in this way: officers who are now principal registrars continue principal registrars under this proposed measure. If their future salary is less than their past emoluments they have no claim for compensation, unless they were appointed previous to these suspending Acts in 1835. Of that category of persons, I apprehend there are very few indeed; I do not think there are anything like half-a-dozen of those. It is a very long time ago, 40 years; Lord Canterbury happens to be of that class

class, but the bulk of officers have been appointed long since those Acts of Parliament.

3186. *Chairman.*] Even Mr. Dyke, I suppose?
Yes. Mr. Dyke as principal registrar. I think that is the operation of the Act. Moreover, I may remark that no additional expense will be occasioned, inasmuch as the claim cannot arise until the principal's income falls in to the fee fund.

3187. Lord *Hatherley.*] Could you mention any precedents of former Acts of Parliament with reference to this compensation of officers holding, in some sense, at will?
Yes; there are undoubtedly precedents of the same character. I would mention particularly the Court of Probate Act in the year 1857, in which the deputy registrars were expressly compensated, and, moreover, what I called just now the *spes successionis*, was very fully developed; because it was actually enacted by the 15th Section of that Act that the then deputy registrars of the Prerogative Court of Canterbury should be the first registrars under that Act; so that both points seem to be illustrated there; the strong point of the *spes successionis*, and also the principle of compensating deputies. Then I would again refer to the Act for the disestablishment of the Irish Church. The same course was followed there; deputy registrars were compensated expressly in terms; which, of course, I need not point out is exactly in *pari materiâ*. It was a great alteration in church matters.

3188. *Chairman.*] Is there any other point which you would like to urge?
No.

3189. Now, you have a general acquaintance with the sort of payments that are made by the clergy, have you not?
Yes.

3190. Are you aware of any fees which press very heavily on the clergy?
I suppose, in speaking from their point of view, they would complain of the fees upon their institution to livings.

3191. Would that be specially the ecclesiastical fees proper, do you think?
No, I think not; and I think that is the great mistake under which the clergy rest. Undoubtedly they have large payments to make when they enter on livings, but a great many of those payments are quite irrespective of fees ecclesiastical proper.

3192. Have you any knowledge of the fees that are charged on Crown appointments?
No, not any special knowledge, but I should have thought there was no special ecclesiastical fee then.

3193. I mean fees on appointment by the Great Seal?
I cannot answer the question. But I may say this, that there is a considerable stamp duty upon presentations. There is generally some expense in the preparation of the presentation which very often falls on the clergyman himself, though sometimes the patron takes it. Then they have first fruits to pay on entering; and they have these fees proper ecclesiastical; so that, altogether, it certainly does come very heavy.

3194. You issue from the Faculty Office marriage licenses to a considerable extent; have you an opinion as to who has the power of altering the amount of the fee on marriage licenses?
It is a point which one has not considered very closely, but I should apprehend, speaking on the moment, that there is hardly any such power; not a power to increase it, certainly. The fee was diminished with the consent of all parties, as your Grace is aware; but that makes me fancy that there is no arbitrary judicial power to alter fees, because, in the case of those fees which have been judicially altered, that has always been done under a particular Act of Parliament.

3195. Were you a party to the diminution of the fee on marriage licenses in the various registries in London?
Yes, I was.

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3196. That was by general consent?
Yes. Lord Canterbury for our office consented, and Mr. Dyke; of course I was only deputy.

3197. And you are of opinion that that could not have been done except with the consent of the parties?
I should think not. I know, in the case of fees on institution, and consecration, and faculties, it proceeded upon an Order in Council based upon a particular Act of Parliament.

3198. That does not refer to marriage licenses?
No.

The Witness is directed to withdraw.

Mr. ISAMBARD BRUNEL, D.C.L., is called in; and Examined.

Mr. *Brunel,* D.C.L.

3199. *Chairman.*] You are Chancellor of the Diocese of Ely?
I am.

3200. And a barrister-at-law?
Yes.

3201. What are your duties as chancellor of the diocese of Ely?
I hold two offices; the office of official principal, and the office of vicar general; they have been held together since the Reformation, but I find more than one instance of their being held together before. The duties of official principal have been reduced by various Acts of Parliament almost to the granting of faculties.

3202. Earl *Nelson.*] It is another word for chancellor, is it not?
No; the two officers together are called chancellor in various Acts of Parliament. The excommunication for contempt was abolished, and the jurisdiction as to tithes reduced in 1813. The great change was made in 1840 by the Church Discipline Act, which took away the jurisdiction of the court in reference to criminal cases against clerks. In 1855 jurisdiction in cases of defamation was abolished. In 1857 testamentary and matrimonial jurisdiction was abolished. In 1860 jurisdiction as to brawling was abolished, and in 1868 jurisdiction as to the compulsory payment of church rates. The jurisdiction which remains is to a great extent obsolete, such as jurisdiction in cases of immorality in the laity; then there is neglect of duty by churchwardens; there have been some cases of that within the last few years, not in my court, but in the Court of Arches; and then there are proceedings relating to the removal of portions of the fabric of a church or monuments without a faculty; and the converse act of erecting things without a faculty. That disposes of the criminal jurisdiction of the Consistorial Court. There are some civil proceedings which can be taken before it, such as for perturbation of seat; also cases with reference to church rates, where they still exist, and for the recovery of penalties for non-residence under the Act 1 & 2 Vict c. 106. Lastly, there is the matter which is the sole practical residue, namely, the grant of faculties. Perhaps I might say with reference to that, that the division of faculties into contentious and non-contentious is rather a mistake in my opinion, because many non-contentious faculties are as important from a legal point of view as those which are contentious. I have delivered judgment in court twice in non-contentious cases, and once in a contentious case during the last six years. That is all I have to say upon the subject of official principal.

3203. *Chairman.*] How many cases respecting faculties do you think have come before you since you first became chancellor?
About from 10 to 20 in the year; 15 would be about the average.

3204. Then you say that in some of these you delivered judgment in court?
In two cases of non-contentious faculties.

3205. Why did you select those two to be so treated?
Because they were cases of great difficulty, cases where I was asked that a public road should be widened at the expense of the churchyard; and it is unlawful

unlawful to do that unless there is an Act of Parliament permitting it in any special case.

3206. And was there no dispute in these cases?
No dispute; but I wished to guard myself against granting the faculty without stating the reasons, because in each of these cases there was the Cambridge Improvement Act, which, in my opinion, enabled the thing to be done, and it could not have been done otherwise.

3207. In other cases you merely issue the faculty from your office in London?
Yes.

3208. Without stating any reasons, you grant the faculty, or refuse it?
Yes.

3209. Have there been any cases of contentious faculties?
One case has been decided, and another is pending.

3210. How does the contention arise in those cases?
In the case which has been decided, it was an application for a faculty for enlarging a church, which was opposed.

3211. Was the matter referred to the vestry in the first instance?
Yes, I always refer it for consideration by the vestry unless under some very special circumstances.

3212. Earl *Nelson*.] Then with the exception of those fifteen cases of granting of faculty, your office is almost a sinecure?
As regards official principal.

3213. *Chairman*.] You consider that it is desirable, as a general rule, to refer the matter to the vestry?
Yes.

3214. And that that is the best way of arriving at the opinion of the parishioners?
Yes. Then as to the bishop, when I first became chancellor, it was agreed between Bishop Browne and myself that I should submit every case to him; but it was found extremely inconvenient to send the papers to him while he was about in the diocese, and it was given up after a time. As a matter of fact, I consult the bishop upon important points, but not in every case.

3215. Then do you think it desirable that changes should be made in churches without the knowledge of the bishop?
No, I object altogether to the system of faculties. I should be very glad to see the whole thing changed. I should wish that the bishop should grant a license in every case, and that the chancellor's duty should be simply that of advising him that all legal requirements were complied with; but that, of course, is a very wide subject.

3216. Viscount *Halifax*.] What is the difference between issuing a faculty and issuing a license?
There is no such thing as a license now. I would abolish faculties, and substitute for them a license by the bishop.

3217. What difference would there be between them?
No difference except that you would get rid of the name faculty which is much objected to; and also the procedure would be very much simpler, because this license would be on one sheet of paper and would contain some indication of the chancellor's approval of the matter from a legal point of view; and then it would come before the bishop to deal with from a general point of view.

3218. *Chairman*.] But would your license, then, secure the consent of the parishioners?
No, the request for a license should in some way be communicated to the parishioners before it came before the chancellor.

3219. Viscount *Halifax*.] It would be the same thing in another way, would it not?
It would be very much simpler. It is not a suggestion of mine, as it has in substance

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substance been suggested by the Salisbury Synod. It is something different from a change of name, because the steps in granting a faculty are very confused and lengthy. There is the petition, the citation, and the faculty itself, all of which are long documents.

3220. Earl *Nelson.*] And add to the expense?
Yes.

3221. *Lord Steward.*] They also add to the notice which the parishioners get?
That is the citation.

3222. *Chairman.*] At present is the bishop's approval generally sought before a faculty is issued, under the present bishop?
I fancy so, because he is generally asked to contribute to the fund.

3223. Only in that way?
In no other that I am aware of.

3224. If he does not contribute, do you take it for granted that he disapproves?
No, but if he does contribute I take it for granted that he does approve. When I see the bishop's name upon the subscription list, then I do not ask him if he thinks that the faculty should issue.

3225. Earl *Nelson.*] You look upon the subscription money as an Episcopal Act?
No; the consent of the bishop is not legally necessary to the grant of the faculty.

3226. *Chairman.*] Do you consider that the bishop might himself sit in the Consistorial Court and grant a faculty?
In the Consistorial Court of Ely, by my patent, he may sit if he chooses. I have asked his Lordship on one occasion if he would sit, and he declined.

3227. Earl *Nelson.*] In the case of the official principal, you do not consider that a lawyer would be always necessary, do you?
I have some hesitation in answering that question, but I should say, Yes. In the case of official principal I should think there could be no doubt whatever of it, because the questions which come before him are purely legal.

3228. You heard the evidence of the chancellor of Chester to the effect that he had dealt with all these faculty cases without any appeal from him?
Yes.

3229. *Chairman.*] When you say that a lawyer is necessary, I presume you mean that a knowledge of law is necessary; it is not the fact of being called to the bar that you think important?
I confess to thinking that a legal training is necessary for these things, as well as the knowledge of law, which can be obtained from books.

3230. What are the provisions in this Bill to secure legal training and legal knowledge?
That of being a barrister of seven years' standing is the provision in the Bill for chancellors.

3231. Whether he has held any brief or not?
Yes; it follows in that respect the Judicature Act and other Acts.

3232. Are you acquainted with any barristers of seven years' standing who have never held a brief?
I cannot answer that question.

3233. But you would not think that the mere fact of a man being called to the bar, as many country gentlemen are, for example, would qualify a man to be chancellor of a diocese?
I think, in the future, it would, because the call to the bar is preceded by an examination, I have heard, rather a stiff one. The provision in the Bill does not supersede the canon of 1603.

3234. Earl *Nelson.*] You do not think it does?
No; it was not intended to do so.

3235. *Lord*

3235. *Lord Steward.*] That qualification is, "one that is learned in the civil and ecclesiastical law"?

"And reasonably well practised in the same."

3236. Earl *Nelson.*] Do you not think that it would be advisable to make sure of that qualification by inserting those words in the Bill?

I think it might be advisable, if there is any doubt upon the subject.

3237. *Chairman*] You think that the qualifications of the canon ought to be preserved?

I think so.

3238. Earl *Nelson.*] And a clergyman complying with the qualifications of the canon might be more competent than a lawyer who was only a barrister of seven years' standing; would you not say so?

I cannot understand how a clergyman could be reasonably well practised in the law. I will read to your Lordships the words of the canon: "One that is learned in the civil and ecclesiastical law, and is at the least a Master of Arts or a Bachelor of Law, and is reasonably well practised in the course thereof."

3239. Lord *Winmarleigh.*] Are you acquainted with the diocese of Chester at all?

No.

3240. You could not speak to the practice in that court?

No.

3241. *Chairman.*] Or with the diocese of Carlisle?

Yes; I am acquainted with that.

3242. Have you read the published judgments of the clerical chancellor in Carlisle?

Yes; and I have had the pleasure of assisting him in obtaining information more than once.

3243. You have not been his assessor, have you?

No; I have sent him information.

3244. He is not a judge who would be likely to ask for the assistance of a lawyer, is he?

I do not know at all.

3245. Has he not the reputation of being very learned in ecclesiastical law?

Yes, I consider him to be extremely learned.

3246. Lord *Winmarleigh.*] Have you ever heard of any appeals from the decisions of the ecclesiastical judge in the diocese of Chester?

I have not heard of any.

3247. You have not heard of any either in the time of the present chancellor or in the time of his predecessor, both of whom were clergymen?

No, I have not.

3248. *Chairman.*] What are the disadvantages which you think would arise from a clergyman being appointed?

I should have preferred not to have given evidence on this subject, but, as I am asked the question, I must answer it. I think that the whole appearance of ecclesiastical law has changed within the last 20 or 30 years, and that while it was quite possible formerly for persons who simply studied law in a library to be good chancellors, yet that is hardly possible at the present time. For example, canon law, which forms a great part of the law of the church, has been reduced in value very considerably of late years. I myself never look at Gibson's Codex for months together, whereas formerly it was the ordinary book of reference for anyone who cared for such matters.

3249. Is it not the case that the race of ecclesiastical lawyers is dying out; that lawyers scarcely give the attention to ecclesiastical law which they used to do when Doctors' Commons was a separate corporation?

Yes, it may be so; and I think also that the study of ecclesiastical law is dying

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out amongst the clergy. I should like also to say that statute law and case law form such a very large part of ecclesiastical law, that a person requires access to a large and complete library in order to form a judgment upon any matter; that is my experience. At the same time, every one knows that clergymen have been chancellors of dioceses formerly, and have been most learned chancellors. I think that Burn, the author of "Ecclesiastical Law," was a clergyman; and the case of Chancellor Martin has been mentioned to your Lordships.

3250. Viscount *Halifax*.] We have understood that in two dioceses, with ecclesiastical chancellors, almost all questions have been settled amicably within the diocese. Do you see any difficulty in chancellors being, I do not say necessarily clergymen, but resident within the diocese? Supposing really contentious matters were decided occasionally by the chancellors, they would always come up to the Dean of Arches, or some central judge, so ensuring a uniformity of decision in contentious matters throughout England?

I think that cases of faculty may well be decided by the chancellor in each diocese. In my own case, I went to Cambridge, and the church was within a mile of Cambridge, and the witnesses, some of whom were very old (it was a question as to usage and prescription), some being over 90 years of age, came in with very little trouble to themselves, and gave their evidence. Of course the Dean of Arches could have gone down to Cambridge, just as I did.

3251. Would it not be more easy for witnesses of that kind to come before a chancellor resident in the diocese, taking one case with another?

Yes. Then I should say that, for practical purposes, I am myself resident in the diocese of Ely, although I live in London. I can reach the diocese of Ely in an hour from London, and it is much more convenient for a great many of the clergy to come to London, than it is for them to go to Ely; and the fact that Ely House is the bishop's official residence in London, which results in his lordship's being often resident in London, and the clergy coming to him, and so on, makes it very convenient for them to see me in London; so that I cannot consider myself a non-resident chancellor.

3252. You do not attach any value to what the Chancellor of Chester did attach value to, that a man should be resident within the diocese?

Not actually living within the diocese, so long as he is always ready to discharge his duties at any time.

3253. Does not it depend to a certain extent upon the distance of the diocese from London?

Yes; no doubt it might be desirable for chancellors in the north to be resident. The chancellor of Manchester is a barrister living in Manchester.

3254. All ordinary easy cases might as well be decided without any abstruse knowledge of law, might they not?

Easy cases, of course, might; but the small cases are not necessarily the easy ones, especially at the present moment, when the law is so unsettled. I have spent many hours upon what seemed at first sight a very easy case.

3255. If all cases which are not very easy are decided locally, is not there some danger of there being contradictory decisions?

Of course there is more chance of that than if they were all heard by one person; but I think lawyers generally follow each other very much.

3256. *Chairman*.] As to the office of vicar general, what are its duties?

The first duty is the granting of marriage licenses, which I think falls to the vicar general; that is to say, the appointment of the surrogates in the first instance, and advising them as to the granting of licenses and determining the questions arising upon *caveats*. I quite agree with the Vicar General of Canterbury, that very important duties are connected with that part of the office, very important to the persons concerned, of course. I have several cases in the course of the year, although I do not grant many marriage licenses. I have one at this moment, and I had another in January last, in which I refused to allow the license to issue.

3257. Do you think these duties could be performed well by a clerical chancellor?

If

If the clerical chancellor possessed the legal knowledge, they would be; I should think in that case it would be likely that they would be.

3258. Earl *Nelson.*] You said that you did not issue marriage licenses to a great extent; who does?

There are in the diocese of Ely four commissaries of the bishop, who claim to issue marriage licenses, the result being that the marriage licenses issued from the registry of the diocese are fewer than they would otherwise be; and it would be one of the objects of this Bill to do away with those commissaries in order to bring the whole thing under the chancellor. There is a conflict of jurisdiction in the matter which gives rise to a great deal of difficulty.

3259. We have heard that marriage licenses are issued from the registry of the diocese, and therefore I had an idea that the registrar issued them generally; but that is not the case?

Yes, the chancellor does not personally issue them.

3260. But the registrar issues them for the chancellor?

Yes, as registrar.

3261. Then the chancellor does not issue them?

No, I did not mean by "issue," "send them actually out." They go in his name and under his seal, and he is the judge of the court who under the Marriage Act has to decide the questions upon a *caveat.*

3262. Viscount *Halifax.*] Does he decide a case in which he has issued the license?

The *caveat* precedes the issue of the license; the *caveat* is entered at the registry by any person who objects to the grant of the license, and then the grant of the license is suspended until the matter of the *caveat* is decided.

3263. By whom?

By the chancellor.

3264. *Chairman.*] He decides whether it shall be issued or not?

Yes; but generally speaking he advises the surrogate in the first instance whether the matter shall go forward at all; that is my experience. I have hardly ever had a *caveat*, but perhaps half-a-dozen cases in each year of letters and telegrams from a surrogate asking what he should do in any particular case. Some of the cases are difficult, such as where a man wants to marry again, and his wife has not been heard of for a long time. That involves a good deal of correspondence to know all the actual facts of the case.

3265. Earl *Nelson.*] Are there many of those cases in one diocese in the year?

No, not many with me; never more than six, I think; then I grant very few licenses.

3266. Then what would be the objection if those sort of cases were sent from all over England to the vicar general of the province?

The vicar general of the province at the present time, I think, grants between 19 and 20 per cent. of the licenses.

3267. Why should he not have those few cases that now come, in which an opinion is requisite?

His work would be five times what it is now; that would be one objection to it.

3268. But, nevertheless, there are very few cases of that sort that come up?

I have not had many.

3269. Lord *Winmarleigh.*] Are the average number of licenses issued in the diocese of Ely now greater or less, according to your opinion, than they used to be?

I can give you the licenses for the three years in the return for 1871, 1872, and 1873.

3270. For the whole diocese, do you mean?

No, those granted from the registry of the diocese. In 1871 it was 61; in 1872 it was 71; and in 1873 it was 75.

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3271. Have you reason to know whether the habit of applying for marriage licenses is on the increase or decrease?
The last return I saw, which was for 1873, represented about 200 more than previously, 17,350. I think the average for the three years is 17,130.

3272. Had the cost of the license been the same for the whole time?
I think so.

3273. *Chairman.*] You somewhat misunderstood Lord Nelson's question, you stated that if the cases to which he alluded went to the central office in London, the business of that office would be increased five-fold?
The business that the vicar general now has in deciding in contested cases, I meant.

3274. How would that be if there are few such cases?
I presume that as regards the four-fifths which he does not at present decide upon, the number of contested cases is in the same proportion as that of the fifth which he does; that was what I meant.

3275. What other duties has the vicar general?
In the diocese of Ely he visits the churchwardens in the Isle of Ely; but that is quite exceptional. Then with regard to the consecration of churches and churchyards, he performs the duties which are laid down in the Order in Council, the approval of the plans, the petition and other papers, and the draft Act of Consecration. That is another matter in which I should be glad to see a reform. I think that all the matters with reference to the consecration of churches might be much simplified.

3276. Viscount *Halifax.*] What portion of the present functions would you omit?
I think the papers with reference to the consecration of churches might be made much simpler.

3277. *Chairman.*] And the expense diminished?
Certainly.

3278. *Lord Steward.*] At the same time you would diminish, would you not, the publicity which the parishioners and the public gain under the present system?
Not as regards the consecration, it would be equally public; but I think that, for example, the Act of Consecration might be very well omitted altogether; it is a long document, it is the record in the book of the diocese, not only of the consecration, but of all that took place at the ceremony down to the text from which the bishop preached and the hymn which was sung; that is sent up to me to my chambers to be approved of, because I decline to take the fee unless I do all the work which is mentioned in the Order in Council.

3279. Does the Order in Council require that all these particulars should be entered?
No, I fancy that it is old usage.

3280. Lord *Winmarleigh.*] Is that always done?
I cannot say that it is always done; it is put in the Order in Council as one of the duties of the chancellor to approve of the draft Act.

3281. Lord *Hatherley.*] Do you happen to know that in some dioceses they curtail the document very much?
No, I do not.

3282. Lord *Winmarleigh.*] In what way would you simplify the matter; is it by taking the conveyance and consecration together. At the present moment it goes through two departments, does it not, the Ecclesiastical Commissioners and the Registrar of the Dioceses Department?
Yes, and also the bishop's secretary.

3283. In what way would you combine all the duties which they now perform?
I do not think that the duties in that respect could be much simplified, but I think that the whole thing might be placed upon the same basis as the Additional Churchyard Act places the consecration of small pieces of churchyards, where

where everything is done in a much simpler way ; there is simply a record of the consecration, I think, endorsed upon the deed.

3284. *Lord Steward.*] Do you think it would require an Act of Parliament to shorten the Act of Consecration ?

Not the Act, but the whole state of things, I think, could hardly be altered without an Act of Parliament.

3285. For that particular document would it be necessary ?

No, I think it might be simplified without.

3286. *Chairman.*] Have you heard much complaint of the fees charged for consecrations?

Yes, I have heard that.

3287. These fees are partly to the Ecclesiastical Officers of the diocese and partly to the Ecclesiastical Commissioners, are they not ?

Yes, not the fees which are mentioned in the table.

3288. But certain fees are payable to the Ecclesiastical Commissioners ; is that within your knowledge ?

In some cases, no doubt.

3289. What are those fees for ; for examination of the conveyance, I suppose ?

Yes.

3290. Is the conveyance, then, in such cases examined twice ?

Yes.

3291. By two sets of lawyers ?

Yes. It is one of the duties of the chancellor to examine the papers, and I very often have the conveyance sent to me, but, generally, too late to be of any use even if there were any necessity for looking into it.

3292. Do you think it possible that such a case as this could arise, that a gentleman making a present of a chapel on his property to the Church, should find that he has not only to pay for the conveyance to the diocesan officers, but also to pay a large sum to the officers of the Ecclesiastical Commission for another examination of the title ?

Yes, I should think that very probable.

3293. Does that appear to you necessary or unnecessary ?

Very unnecessary.

3294. You think the chancellor may be trusted ?

I should rather give it to the Ecclesiastical Commission of the two.

3295. Viscount *Halifax.*] Is not the conveyance of the ground to the Ecclesiastical Commissioners ?

I think it is in most cases, if not in all.

3296. In point of fact, the lawyer or legal adviser of the Ecclesiastical Commissioners must be consulted as to whether it is a good conveyance or not, a good title or not ?

Yes.

3297. That I apprehend is paid for, not by the Ecclesiastical Commissioners, but by the person who gives the land ?

Yes.

3298. *Chairman.*] Then would it appear to you that it is necessary that the chancellor, though the bishop's legal adviser, should also examine the conveyance ?

Not if the Ecclesiastical Commissioners do.

3299. Then you would think one set of officers might disappear ?

One set of duties might disappear.

3300. And thus expense be saved ?

Yes.

3301. Viscount *Halifax.*] Is there any difference between the conveyance from a person granting a site to the Ecclesiastical Commissioners, and any other conveyance made by that person ?

No, I should think not.

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3302. *Chairman.*] I understand you to think that it is unnecessary that the title should be twice examined ?
Yes, when the Commissioners are one of the parties.

3303. One examination being for the satisfaction of the bishop and the other for the satisfaction of the Ecclesiastical Commissioners ?
Yes.

3304. Whereas you think that if they could agree on the same legal adviser in the matter, half the expense might be saved ?
Yes.

3305. Viscount *Halifax.*] Might not the bishop under all circumstances be satisfied with the conveyance to the Ecclesiastical Commissioners, they being satisfied themselves of its validity ?
Yes, I should think so.

3306. *Chairman.*] What other duties has the vicar-general ?
In Ely the chancellor presides at the diocesan synod for the election of the proctors in convocation ?

3307. As vicar general ?
As vicar general. Secondly, he presides at meetings of the commission under the Church Discipline Act.

3308. Necessarily ?
No, not necessarily. We have had three cases, but only one of those came to a hearing. In that case I was the chief commissioner. Thirdly, he attends the bishops as legal assessor when acting as the visitor of colleges. Fourthly, he attends the bishop as legal assessor at diocesan and archidiaconal conferences. Fifthly, he attends meetings for fixing the fees under the Dilapidations Act. Sixthly, he fixes tables of fees under certain Acts of Parliament. Seventhly, he acts as general legal adviser to the bishop.

3309. Is it your opinion that these duties could be transacted by a central chancellor in London for the whole province ?
No ; I should think certainly not. I used to estimate that they took me one day in the week when the bishop was not resident in London.

3310. And these are all your duties as chancellor ?
Yes.

3311. What are your emoluments, if I may ask ?
As it has been stated in this room that they are 150 *l.* a year, perhaps I ought to say that the sum is about half that. The average is 77 *l.* ; those are the gross receipts ; the net receipts are 55 *l.*, taking one year with another.

3312. Earl *Nelson.*] As to the seventh of the duties of the vicar general, that of being general adviser of the bishop, how does that go with the fact that nearly all the bishops have a secretary who is described to us as being the legal adviser of the bishop ?
I think the work is divided rather in the way that the work is divided between a barrister and a solicitor in ordinary business ; the bishop's secretary advises the bishop in routine matters and so forth, but when any question of difficulty arises which would be submitted to counsel in the ordinary business of a solicitor, then the chancellor is invoked.

3313. *Chairman.*] That is all you wish to say on the subject of your office as Chancellor of Ely ?
It is all I should have wished to say, but a witness has appeared before your Lordships from the diocese of Ely, and has made a statement with reference to a case of sequestration. Perhaps I ought to mention the facts of that case as they present themselves to me. The Bishop of Ely thinks it desirable, I believe, that sequestrations should be issued in almost every case. The deputy registrar of the diocese issued a sequestration last summer to a benefice in Huntingdon, and the registrar of the Archdeacon of Huntingdon also issued a sequestration. When that came to my knowledge I looked into the matter, with the Bishop of Ely and with the Archdeacon of Huntingdon, and I came to the conclusion that as a fee to myself was concerned I should not take any part in deciding what should be done, and it was agreed between us that the archdeacon and myself should draw up a case,

and

and that I should ask some friend of mine, a brother chancellor probably, to look into it. It would be a very difficult case, because it would require reference to the records at Lincoln in order to see what was the practice when Huntingdon belonged to the diocese of Lincoln. Matters stood in that way until this Bill came into shape; and of course if this Bill were to pass into an Act of Parliament there would be no necessity for continuing the investigation. Steps have been taken to prevent the difficulty from occurring again, and (this is the point I especially draw attention to) the gentleman who appeared before you has been held harmless from the double expense.

3314. That is to say, the pound has been remitted?
More than a pound. There is one thing that I should like to say. It has been stated before your Lordships that the effect of the Public Worship Regulation Act has been to diminish the work of chancellors of dioceses. My impression is that it will rather increase it. The work of chancellors was really diminished by the Church Discipline Act; but as matters stood two years ago, I think the work will be increased. The first reason for that is that faculties are applied for now more frequently than formerly; and then, if the Act were to be put into operation at all, I presume that the bishop would consult the chancellor as to the exercise of his discretion; and in those cases where the parties submit to the bishop, I presume that the chancellor would sit with him as assessor; certainly the present working of it is, that the faculties are increased in number, and probably in the other cases the work would be increased also.

3315. Have you ever sat under the Church Discipline Act?
Yes, once.

3316. On what sort of a case was that?
A case of immorality.

3317. And did you sit with the bishop?
No, on the Commission.

3318. But I mean in that court that was pointed out?
No, never.

3319. Has that court, to your knowledge, ever sat in Ely?
No, never.

3320. Never since you were chancellor?
Never, and not before, I think.

3321. How long is it since the Act was passed?
One thousand eight hundred and forty; 36 years ago.

3322. And there have been no cases of that court sitting?
No.

3323. You referred to that case from the diocese of Ely, in which the fees were severe; have you heard many complaints of fees paid by the clergy on institution?
I think they generally complain of them when they speak about them, but I have never heard of any cases which I thought were really vexatious cases. I think myself that the fees for institution ought to be according to the value of the preferment, and I think that the clause in the Bill referring to that subject ought to go further; that is my personal opinion.

3324. Is it your belief that in Crown livings there are excessive charges on institution?
I know nothing of that but what I have heard in this room.

3325. That is all you wish to say on this subject?
Yes.

3326. You have drawn up this Bill under instructions?
Yes.

3327. What do you consider to be the principal objects of this Bill?
I think that, recognising the fact that there must be legal officers for the conduct of the business of the church, it reduces them to the lowest possible

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number, and pays them on a very moderate scale, and that the result of the two processes will be a reduction of fees.

3328. Are any of these officers at present underpaid, in your estimation?
Yes, I think that the registrar of the diocese of Ely is very much underpaid. It is held as a sinecure by the registrar; but even if the deputy-registrar held it, he would get less than 200 *l.* a year.

3329. Then with regard to the Judge of the Arches, do you think that he is underpaid?
Do you mean underpaid with 700 *l.* a year, with the mastership of the faculties?

3330. Yes, as Master of the Faculties and Judge of the Arches?
Yes, I should have thought so.

3331. Why do you think so?
The office has generally been held by persons who held other appointments. Certainly from the year 1720 it has been held with the Prerogative Court, and when that was abolished in 1857, the Legislature mentioned 2,000 *l.* a year as the salary for the Dean of Arches. There is a clause in the Act of Parliament which fixes 2,000 *l.* a year as the salary of Sir John Dodson as the Dean of Arches.

3332. You mean as his compensation?
Compensation and salary.

3333. Would you just read that clause in the Act?
It is clause 109: "In case Sir John Dodson, the present Judge of the Prerogative Court of Canterbury and Dean of the Court of Arches, be not appointed the first Judge of the Court of Probate, there shall be paid to him during his natural life, as well by way of retiring pension as of salary as Dean of the Court of Arches, the net yearly sum of two thousand pounds."

3334. Lord *Hatherley*.] Are you not aware that the salary of the Dean of Arches was very small indeed?
Yes, very small; the average was under 1 *l.*, as I make it out.

3335. Earl *Nelson*.] Might I ask how the salary of the Master of the Faculties is obtained; that 700 *l.* a year; where does that come from; is it a certain sum?
No; a fluctuating sum, depending principally upon marriage licenses and payments in the Faculty Office generally?

3336. *Chairman*.] Do you consider that 700 *l.* a year would secure the services of such a judge as is required to be at the head of the two provinces?
I think it would secure the services of such a judge, although it would not adequately pay him. I think that persons would take the office, just as clergymen take livings which do not pay them.

3337. But to secure an officer of sufficient standing to command the respect of the country?
I do not think that the amount of salary affects it.

3338. Supposing that a man had only 700 *l.* a year, would he be a practising barrister?
No; I should think that a retired judge would be the proper sort of person.

3339. You would object to a practising barrister being Dean of the Arches?
Yes.

3340. The office of vicar general could not be united with that of Dean of the Arches?
I should think it more convenient to keep them separate. The vicar general is a barrister in actual practice, concerned with cases in a different stage.

3341. Is it desirable that the vicar general should be a practising barrister?
I think a practising barrister is in a better position than anyone else to advise your Grace in the matters which come before you.

3342. Also, would there be an objection to the same person advising the archbishop

archbishop as to which cases were to be taken up, and then sitting as judge on them?
Yes.

3343. So that there would be difficulties in the way of uniting the vicar general's office with that of the Judge of the Arches?
That would be impossible under the Bill, because if the commissary of Canterbury were united with the vicar general, your Grace would be without any adviser at all.

3344. Was it not the case that in the Province of York the three offices were united?
Yes.

3345. Did inconvenience arise from that?
I have understood so.

3346. Has it been the custom to send cases direct to the Privy Council from the Province of York?
The Voysey case was retained by the Privy Council. That can only be done by the consent of all parties.

3347. And if the parties objected, it could not so pass off?
No; there was a case the other day where they objected.

3348. Viscount *Halifax.*] From the Province of York, do you mean?
The case the other day was not; but the Voysey case came from the Province of York, upon a matter during the progress of the case, and it was then retained.

3349. Did not the Voysey case arise in the diocese of York, as well as in the Province of York?
Yes.

3350. Did it go to the provincial court from the diocesan court, and then up?
It went by letters of request, from the Archbishop of York to the provincial court; it would never have been heard in the diocesan court.

3351. It went by letters of request from the archbishop as diocesan, to the archbishop as archbishop?
Yes.

3352. Bishop of *Ely.*] Do you know the number of cases coming annually before the Arches Court?
His Grace has the return from which I gather that information. I think 11 is what I remember, and in the case of York, it is three in five years.

3353. Therefore, the number of cases coming annually before the provincial judge, the present Dean of the Arches, would be something under 20 per annum?
Yes, I should think so.

3354. Earl *Nelson.*] A memorandum has been furnished to us by you, and there is one thing in it which I want explained. In the Bill, the 50th Clause, the remuneration of the present provincial judge is put at 1,500 *l.* In the Paper to which I have alluded, which you have put in in explanation of the Bill, I find that the provincial judge is put at 3,000 *l.* a year instead of 1,500 *l.* a year. I want to have that explained?
The 1,500 *l.* a year is for the existing provincial judge; the Bill, your Lordship observes, contains no figure in the schedule. It is put at 3,000 *l.* in the Paper, because that is the sum which was to be assigned to the provincial judge under the Public Worship Regulation Act as it left your Lordships' House. The Public Worship Regulation Bill originally contained no provisions for the appointment of the provincial judge. Then Lord Shaftesbury's clauses were put in, and that referring to the salary of the judge was carried, "not exceeding 4,000 *l.* a year." On the report, the 19th June, the amount was reduced to 3,000 *l.*, and went down to the Commons at that figure. And having to put in a figure for the purpose of the calculation, I took that figure for that reason and for that reason only.

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3355. *Lord Steward.*] You are aware that a good deal was struck out in the Commons; there is no provision in the Act whatever of that sort?
Yes. It is not my suggestion of what I should think the proper amount, but I took that figure because it was in the Bill as it went down to the Commons.

3356. Earl *Nelson.*] This Bill only gives 1,500 *l.*?
Yes, only 1,500 *l.* to the existing judge, and nothing to the new one.

3357. Does that 1,500 *l.* pay for courts, and is that in addition to the 700 *l.* for the Master of Faculties, or does it include that?
It is inclusive of the faculties, and it is inclusive of the sums which will be paid to the judge by the Act of last year.

3358. *Chairman.*] What are those sums?
The judge now holds offices worth about 700 *l.* a year; and by the Ecclesiastical Fees Act of 1875 the sum of 1,112 *l.* 18 *s.* 1 *d.* consols is appropriated for the payment of the salary of the judge and his clerk; and the 50th Clause of the Bill provides that, as from the 1st of last July when he entered into the office, he shall have 1,500 *l.* a year.

3359. Earl *Nelson.*] You mean that in addition to the 700 *l.* a year from the faculties, he has the interest of this 1,100 *l.*?
The principal and interest; that is diminishing of course day by day, still it is to be taken into account in paying him the 1,500 *l.* a year.

3360. *Lord Steward.*] Clause 50 fixes the remuneration of the existing provincial judge?
Yes.

3361. Under what clause would the salary of his successor be adjusted?
Clause 32: "From and after the commencement of this Act, there shall be paid to the persons appointed after the passing of this Act, to any of the officers mentioned in Schedule (B), &c." Your Lordships have to fix the figure.

3362. Earl *Nelson.*] I see by clause 52, where the compensation to existing officers comes in, that they are to be paid according to a scale in comparison with the general falling off of the whole amount. That we can understand is fair enough, *pro rata*, but if I read it aright, the salary of the provincial judge, which may be 1,500 *l.*, or may be 3,000 *l.* a year, has first to be deducted before such *pro rata* sums are distributed among the existing officers?
No; the future judge is not touched by that clause at all, because he does not hold at the passing of this Act any of the offices. The expression, "provincial judge," in line 27, in Clause 52, refers to the existing provincial judge; and his salary is not to be paid out of this fund until there is a surplus in the fund for doing so. The money is to be borrowed for that purpose under Clause 58.

3363. *Lord Steward.*] He will be paid, though the money will be borrowed?
He will be paid, but not out of the divisible fund.

3364. *Chairman.*] It will not diminish the payments to any other court officers?
No.

3365. You say that the number of cases likely to come before the provincial judge does not appear to you to be numerous?
No; I should think not.

3366. Bishop of *Ely.*] Not more than 20 in a year?
Not more than 20.

3367. *Chairman.*] You cannot calculate upon what will be in future?
No; the case heard by me is appealed to him.

3368. Now, with regard to these cases; supposing they were 20 or 30, does any inconvenience appear to you likely to arise if the person holding the office is a judge of some other court, and therefore these cases must be heard at odd times when that court is not sitting?
Yes, I think there is an inconvenience in that; and it would be still greater under the Judicature Act.

3369. How

3369. How so?
I fancy that the time of the judges is more taken up at the present moment than it used to be; I think that they help each other more than they used to do.

3370. Then do you think that it would be an inconvenient custom for the provincial judge to be one of the judges of the land?
Yes, I think it would.

3371. Would it be lawful for one of the judges of the land to hold the office now?
I do not know, I am sure.

3372. What was the provision introduced in the case of Sir Robert Phillimore, in the late Judicature Act?
It was provided that if he resigned his ecclesiastical appointments, he should be placed in the same position as regards his emoluments, and so forth, as the other judges of the High Court of Justice.

3373. May that be taken, do you think, as an intimation on the part of the Legislature that the office of one of the judges of the land is not compatible with this ecclesiastical judgeship?
Yes, I should think so.

3374. Because it was made a condition of Sir Robert Phillimore becoming one of the other judges that he should resign such office?
Yes.

3375. What inconveniences would arise from the office being held by one of the judges of the land?
The only inconvenience would be, that he would not have time to consider the cases during the sittings of his own court.

3376. And delay might arise in consequence?
Yes.

3377. Which delay has been one of the great inconveniences of ecclesiastical courts in past times, has it not?
Yes, I think there has been considerable delay in ecclesiastical cases.

3378. From their being heard by the judge of the Admiralty Court?
Yes.

3379. It would appear that, in your judgment, neither a practising barrister, nor one or the judges of the Realm, ought to hold the office of ecclesiastical judge?
No; I should think the retired judge would be the proper person.

3380. Would it be common for a retired judge to have health, and strength, and faculties?
I should think so.

3381. Earl *Nelson*.] A retired judge retires on a pension, generally?
Yes, in every case.

3382. And, therefore, if it was a retired judge, you would consider that 1,500 *l*. a year would be enough, would you not?
It is so considered in the Bill.

3383. *Chairman*.] Does the Bill imply that in future if a retired judge hold the office, he shall only have 1,500 *l*. a year?
No; it leaves it open to the rules and orders.

3384. Is there any distinction to be drawn between Lord Penzance and any other retired judge?
No, I cannot see that there is any.

3385. So that it would appear to you to be only reasonable, that if the office were held by a retired judge, the salary should be only 1,500 *l*. a year?
No, I cannot say that; because I think it unreasonable that the pension should have anything to do with the salary of the ecclesiastical judge.

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3386. Then if so, why do you apply that to Lord Penzance?
It is so applied in the Bill.

3387. Bishop of *Ely*.] Do you think that the income ought to be calculated solely with reference to the work which he ought to do, and not with regard to any retiring pension which he may have for work previously done?
I think so.

3388. *Chairman*.] Then why do you introduce that clause with reference to Lord Penzance?
I presume I was instructed to do so.

3389. Bishop of *Ely*.] If the salary is to be calculated solely with reference to the work to be done, and if the work to be done may be anticipated to be the decision of some 20 cases per annum, does 1,500 *l*. a year appear to be a proper, and not more than a proper, remuneration for a judge having cognisance of 20 cases annually?
I always thought 2,000 *l*. a year would be a very fair remuneration.

3390. *Chairman*.] Are you aware what the present salary of a county court judge is?
They vary I think from 1,200 *l*. to 1,800 *l*.

3391. Do you think that the provincial judge ought to be a person in the same sort of position as a county court judge?
I think he ought to be in a much higher position.

3392. How would you secure that?
I think it is secured by the nature of the position that is offered to him.

3393. You think he may live upon the honour of the post?
He has got 3,500 *l*. of his own.

3394. I am now referring to the Bishop of Ely's view of the matter; that it is not a retired judge, but a person performing that duty and that duty alone?
I do not know that a person would retire from the Bar to take such a post.

3395. Lord *Hatherley*.] Do you know how far the time of the judge of the Court of Probate and Divorce is occupied by his duties?
Very fully, I believe.

3396. *Lord Steward*.] You are aware that the Queen has power to grant pensions to certain persons who have held high political offices?
Yes.

3397. And are you aware that it is provided that if persons enjoying those pensions again enter the Queen's service their pension is taken into account in estimating their salary?
Yes.

3398. So that a Lord Chancellor who had obtained a pension of 5,000 *l*. a-year, quitting the office of Lord Chancellor, enjoys that pension; and if he resumes office as a Secretary of State, he would only be entitled to 5,000 *l*. a-year?
Yes.

3399. Do you conceive that a similar principle applies in the case of a retired judge?
No, I do not think it does.

3400. Will you explain why there should be a difference?
I have often thought of that argument; but it has always seemed to me that as the sources from which the emoluments are derived are different, the analogy does not hold. The pension and the salary come, practically, from the same fund in the case of the Lord Chancellor; but in this case the pension to the retired judge is a pension from the public funds for past services; and I never could understand why the ecclesiastical salary should be fixed with reference to this pension, as they come from different funds.

3401. *Chairman*.] Still, as you have consented to fix it in reference to Lord Penzance, you do not think, do you, that there is any injustice in making a similar arrangement in the event of his successor being also a retired judge?

No,

No, no injustice; and the Bill would admit of that, because whatever sum is put in the Schedule, if the Bill is not altered, would be a maximum sum and not an absolute sum.

3402. But in the event of the two Archbishops and Her Majesty not being able to secure the service of a retired judge, you have said that you would propose a higher salary?
I think 2,000 *l.* a year would attract a fit person to fill the post.

3403. *Lord Steward.*] And that appears to have been the view of Parliament, in the Act of 1857, which you have already quoted to us?
Yes.

3404. *Chairman.*] So that you would not see any insuperable difficulty when you came to fill up that blank, in filling it up with 2,000 *l.* a-year?
No, I should think it the proper figure, giving my own views.

3405. *Lord Steward.*] And that 2,000 *l.* would be partly composed of the emoluments of the Master of the Faculties?
Yes.

3406. *Chairman.*] How would you provide for the other expenses of the court, such as the secretary or clerk?
The Bill provides for the secretary in the same way as the judge, by giving him a salary. The expenses the Bill provides for by borrowed money until the new registrars of the provinces are appointed.

3407. Do you think it necessary that he should have a clerk or secretary?
I have been informed that it is necessary; I cannot say, of course, from my own knowledge.

3408. Is it customary for judges to have clerks?
They have clerks.

3409. Do you know what their salaries generally are?
They are fixed by the Judicature Act, I think, for the future; but I believe that the secretaries of the vice chancellors were paid 300 *l.* a year; those posts were held by barristers.

3410. How would you provide for the expenses of the court?
I should make the registrar provide for those expenses which he provides for at the present time.

3411. But for the building, I mean?
There is no difficulty about that, I think.

3412. Where were these cases held till lately?
Till Doctors' Commons were pulled down they were held in the dining-hall there.

3413. What became of the hall in Doctors Commons?
I think it was destroyed; in fact, I know it is destroyed.

3414. Was it sold for the benefit of anyone in particular?
I think Queen Victoria Street passes on the site of it.

3415. Who got the money on the pulling of it down?
The College of Advocates, I believe.

3416. The court sat in the dining-hall, you say; what was the proper place for the sitting of that court?
The proper place is the vestry of St. Mary-le-Bow.

3417. The same church where bishops are confirmed?
Yes, but they are confirmed in the church itself.

3418. On what principle do you suppose the Archbishop's Courts were held in the vestry of St. Mary-le-Bow?
It was a Peculiar of the Archbishop, and he had a right to hold his court in the middle of the City of London upon that ground.

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3419. Do you suppose that from very ancient times he held his court in the church?
Yes, I think I have read that.

3420. And at York, where were the courts held?
They are held in the Consistory Court in the Cathedral.

3421. Is that part of the Cathedral church?
Yes, I believe so.

3422. Has it any particular name?
I do not know.

3423. Was it Archbishop Zouch's chapel?
Convocation sits there.

3424. You do not know whether that is the place where the court sits?
No, I do not.

3425. Do you think it desirable that they should sit in St. Mary-le-Bow church?
No, I should think not.

3426. Is it true that St. Mary-le-Bow church has ceased to be a Peculiar of the Archbishop of Canterbury, except for the purpose of the confirmation of bishops?
Yes, I think so. I was there at the confirmation of one bishop.

3427. Bishop of *Ely*.] Do you think that the right has lapsed of the Court of the Arches sitting there?
No, I should think not. Since the destruction of Doctors' Commons, the Judge of the Arches has also been Judge of the Admiralty Court, and he has always sat in that court.

3428. Lord *Hatherley*.] With reference to the court sitting in the dining-room, are you aware that Lord Eldon, in the whole of his chancellorship, sat in the dining-room in Lincoln's Inn?
I have heard so, and also that the dining-room at Gray's Inn was used in that way.

3429. For the Courts of Exchequer and Equity?
Yes. There is no difficulty, I think, about the court.

3430. *Chairman*.] Why do you say that?
There are vacant courts at Westminster Hall from time to time; there is the library at Lambeth, and, I believe, the Railway Commissioners sit in this building; so that this room, or a room like this, might be used.

3431. Does it appear to you at all unfair that the judge's salary should be increased out of the general fee fund?
No.

3432. It has been urged that this would be making persons who never are likely to be tried before the judge pay for other people being tried before him; does it appear to you to be solid argument?
I think not.

3433. Why not?
We all pay for the administration of justice.

3434. Earl *Nelson*.] Is not the judge the representative of the bishop, or the archbishop; is he not, more or less, looked upon as the representative of the archbishop?
The Dean of Arches is the representative of the archbishop in provincial contentious business.

3435. And the chancellor is looked upon as the representative doing the work of the bishop?
The official principal is. The vicar general holds a delegated jurisdiction.

3436. *Chairman*.]

3436. *Chairman.*] But you do not mean that the archbishop could sit in the Arches Court; you do not mean that he does business which the archbishop would be allowed by law to do?
I am not sure about that; it would depend upon the usage and the patent.

3437. Earl *Nelson.*] That being the case, that they do represent the bishop and archbishop, would it not be more suitable that their salaries should come from episcopal funds?
I cannot say; the analogy of the judges of the land is not that.

3438. But there are episcopal funds in the hands of the Ecclesiastical Commissioners, are there not?
There have been; but in the year 1850 the episcopal fund was merged into the common fund.

3439. But the Ecclesiastical Commissioners are still receiving procurations and synodals for the bishops, at least as episcopal money?
Yes.

3440. *Lord Steward.*] The whole financial scheme of this Bill is based upon marriage license fees remaining on their present footing, or substantially on their present footing; is it not so?
I think the marriage license fees are about 48 per cent. of the whole.

3441. But if the marriage license fees are swept away, the financial basis of this Bill would be destroyed?
No, I think not.

3442. Would it be possible if the marriage license fees were abolished, as recommended by the Marriage Law Commission, to pay the salaries contemplated in this Bill?
It would not be possible to pay the maximum salaries, certainly.

3443. Would it be possible to pay the minimum salaries?
There are no minimum salaries.

3444. Would there be a very large difference between the maximum salaries and the probable receipts, if the marriage license fees were done away with?
A reduction of 50 per cent., I think, would be made in the receipts.

3445. *Chairman.*] Does this vitiate this Bill more than it vitiates the present system of payment by fees?
No; I think it makes no change in that respect.

3446. At present the whole payments of the ecclesiastical officers are more or less dependent upon the maintenance of the marriage fees:
To the extent of about a half, I think.

3447. And in the event of the marriage license fees disappearing, the payments at present made must take their chance?
Yes, if the marriage license fees were abolished, all the emoluments would be diminished.

3448. And that would be exactly the same under the Bill as under the present system?
Yes.

3449. *Lord Steward.*] But do you not see some incongruity or difficulty in establishing a new state of things under the supposition that existing fees are going to be retained. His Grace has asked you whether the objection which I have urged to the new state of things would not also apply to the existing state of things; is there not this difference between them, that the one is existing and the other is proposed to be newly established.
Yes, there is that difference.

3450. Earl *Nelson.*] Can you give me any idea what proportion of the marriage license fees are received through provincial officers, and what through diocesan; what proportion of the 48 per cent. which you have mentioned are diceived through provincial officers, and what through diocesan?

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I think the number granted by Canterbury is 19½ per cent. of the whole, London 7 per cent., and Manchester 8½ per cent.

3451. *Chairman.*] Have you ever calculated what degree of remission of fees you think might be obtained, if this Bill were in full operation as an Act?
Yes; between 25 per cent. and 30 per cent.

3452. So that on the disappearance of the marriage license fees, supposing them to disappear, there would be a loss still further of about 25 per cent. beyond what you propose to omit?
Yes.

3453. Is it your opinion that the business of these Ecclesiastical Courts could be carried on if there was a sudden disappearance of 50 per cent. of the payments now made to them?
I do not know, I am sure, what would happen.

3454. Do you think the officers are at present so highly paid, that the whole arrangements could stand that diminution?
I presume that such a step would not be taken without some compensation to existing officers, and that it might be possible to commute the compensation for a lump sum, just as in the Irish Church case; something of that sort might be done, but that would be the only way.

3455. Would it be necessary to impose some tax upon the clergy to pay for it?
I think so; there must be some means of making the deficiency good, to a certain extent.

3456. You consider that the existence of some such offices, and the performance of such duties, is indispensable for the maintenance of the Church?
Certainly. I think it becomes more so every day as the law becomes more complicated.

3457. Therefore, if they were not paid from marriage licenses, you must find some other source of payment?
Yes.

3458. That is your deliberate opinion?
Yes.

3459. Have you ever heard of any plan of taxing all holders of benefices in the Church so much for the officers, and so dispensing with all fees?
Yes, that has been proposed to me and suggested as a good plan.

3460. By any competent authority?
A clergyman in the diocese of Ely suggested it to me.

3461. Has it ever been introduced into any Bill?
No, I think not.

3462. I see in one clause of the Bill it is proposed that the diocesan surrogates are to be paid 5 *s.* for a marriage license, whilst the provincial surrogates are paid 2 *s.* 6 *d.* for a marriage license; can you give the Committee any reason for that difference?
The object of this clause was to indicate that the marriage license fee should be, if possible, reduced to the Doctors' Commons scale, thereby carrying out the recommendation of the Royal Commission, that if this fee is retained it should be reduced to a uniform scale and a moderate sum; but as the surrogates are not paid out of the fund (they are to take fees still), it was thought desirable to put into the Bill the fees that they should be empowered to take, and those fees were settled upon this basis, that at the present moment at Doctors' Commons, as your Lordships have heard, the fee is 2 *s.* 6 *d.*, and also in the diocese of London it is 2 *s.* 6 *d.*, and therefore that proviso was put into the clause.

3463. But it is not so in the diocese of Rochester?
No.

3464. Or Winchester?
Yes; the Surrey Office of Winchester charges the same as the other offices at Doctors' Commons.

3465. Then,

3465. Then, do you propose by the Bill that the total of the marriage fees should be uniform everywhere?

It is not proposed by the Bill, but that was the idea, I think, of the framers. We had before us the words of the Marriage Law Commission upon that point, assuming that the marriage licenses are retained for the reasons mentioned in the Report of the Commission. The Commissioners say: "We think that a uniform Table of such fees, upon as moderate a scale as practicable, should be settled by law."

3466. *Lord Steward.*] Is there not a further recommendation that the fees should only be such as are required for the purposes of the law of marriage?

"If, however, it is considered necessary still to charge fees for the solemnisation, or for any of the other legal requisites or incidents of marriage (either on account of the difficulty of replacing the deficiency which their abolition might cause in the income of some of the parochial clergy, or for any other reason), we think that an uniform Table of such fees, upon as moderate a scale as practicable, should be settled by law;" and that there should be no stamp duties.

3467. Earl *Nelson.*] You are aware that in dioceses, where the sum charged for marriage license is uniform, the sum received from different officers from such fee is in very different proportions in different dioceses?

Yes, that is so. The 5 *s.* was taken from Manchester.

3468. In what way does the Bill propose to compensate those clergy who are now receiving as much, I think, as 14 *s.* for marriage fees, if the Bill cuts the surrogates down 5 *s.*?

There is a clause towards the end of the Bill, Clause 60, which enables existing surrogates to charge their usual fees. It is hardly that; but the effect of it would be that.

3469. The effect of it would be to give them power to charge such sums "as may, from time to time, be prescribed by the Rules and Orders"?

The intention of that clause is to enable existing surrogates to charge the existing fees, but it should be made plainer.

3470. Lord *Winmarleigh.*] You say that that clause secures to a surrogate the fees which he has hitherto received; but supposing that there are two surrogates who can be got at by a person applying for a license, would not that lead to his applying to the surrogate demanding the less fee?

I am not quite sure that it would. People go to the clergyman nearest to them, I think; and at the present moment there are varying charges in the same diocese. Take the case of Ely; in Ely itself the surrogates charge 11 *s.* 6 *d.*; in Huntingdon, 15 *s.*; in Bedford, 10 *s.*; in Sudbury, 15 *s.* 6 *d.* In the diocese of Norwich the county surrogates charge from 10 *s.* to 1 *l.* 1 *s.*, and the surrogates at Norwich itself charge from 5 *s.* to 10 *s.*

3471. Have you got the number of marriage licenses issued by those different parties?

No, I have not. Again, in Rochester, in the county part of Essex, 21 *s.* is charged, but in Chelmsford itself 10 *s.*; and in many returns it is said that although such and such a sum is the charge for a surrogate, yet by custom he receives as much more as the parties choose to give him.

3472. Earl *Nelson.*] You said that the Bill did not make the marriage fee uniform?

No.

3473. Nor the payment of the surrogates uniform?

Except in the two cases of Canterbury and London, the surrogates are uniform.

3474. *Chairman.*] Why do you separate them, and make them distinct?

Because they grant so much larger a number.

3475. And because of their present practice?

Yes; and your Lordships will remember that Dr. Deane suggested that they should all be reduced to 2 *s.* 6 *d.*

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3476. Earl *Nelson*.] But if you reduced all the surrogates to 2 *s.* 6 *d.*, would not that directly tend to take away money from the clergy who are clerical surrogates, and divide it between the chancellor and the registrar?

That would depend upon whether the number of marriage licenses was increased to such a number that it would be better worth the while of the surrogate to have them at 5 *s.* than it was to have them at 1 *l.* 1 *s.*

3477. The general charge for the marriage license is not touched by this Bill?

This Bill enables it to be touched.

3478. But it is not touched by this Bill?

It is one of the matters upon which Tables of Fees may be issued; so that it is touched by the Bill. At the present moment the marriage license fees depend upon custom; they have never yet been touched by Act of Parliament.

3479. But this clause reducing the sum payable to surrogates does not reduce the total sum chargeable for marriage licenses?

No.

3480. And therefore, as there is one fixed sum in marriage licenses, namely, the Government stamp, the reduction of the sum to clerical surrogates would necessarily add to the amounts paid to the other people from that marriage license?

In the cases where the marriage license is at 25 *s.*?

3481. In any case, would it not be so?

No, I think it would not.

3482. Lord *Hatherley*.] Does the surrogate in London do anything more than administer the oath?

No, nothing more.

3483. He does not issue the license?

No.

3484. In country dioceses the surrogates issue the licenses themselves, do not they?

They do, but it is sent to them from the registrar.

3485. That might be some reason for the difference of expense, 2 *s.* 6 *d.* being charged in one case, and a larger sum in the other?

I think the reason was that there were so many more. There is no doubt that if you assume that the number of marriage licenses does not increase, 25 *s.* out of the 30 *s.* goes into the Ecclesiastical Fees Fund by the Bill, and is divisible amongst the persons who are to receive it.

3486. Do you know, as a fact, whether there is any difference between the duties performed by the London surrogate and the duties performed by the surrogates in the country dioceses, for which they require to be paid?

No, I think not, excepting this—that the country surrogate receives from the registrar of the diocese the license, and gives it to the parties.

3487. A surrogate merely administers the oath in London?

Yes.

3488. And he does not prepare the affidavit, or take any other part, but simply administers the oath?

That is so.

3489. *Chairman*.] Have you calculated, supposing you had the whole thing before you *de novo*, what sum you think would be required for keeping up this whole machinery of ecclesiastical officers in an effective form?

That would rather depend upon the salary of the provincial judge. If that were put at 2,000 *l.* a year, I should say 32,000 *l.*

3490. And what is the lowest calculation of the present amount of fees?

I have never been able to calculate the fees which would come into the fund at much more than 45,000 *l.* a year. I have made very careful calculations three times over, and they have been checked.

3491. Earl *Nelson.*] Including the marriage licenses?
Yes; but not including the surrogates' fees, because they would not come into the fund under the Bill; nor the payments to archdeacons, which, although they come into the fund, are paid out at once.

3492. Lord *Winmarleigh.*] What do you calculate the surrogates' fees at?
About 8,000 *l.* a year.

3493. *Chairman.*] Then you think that it is indispensable for the well-being of the Church in this aspect that 32,000 *l.* a year should be raised from some source?
Yes, I think that for the conduct of the legal machinery of the Church such a sum is necessary.

3494. Bishop of *Ely.*] And the amount of fees remissible would be the difference between the 32,000 *l.* and the 45,000 *l.*?
Yes.

3495. Have you calculated what would be the amount of relief with that remission to each clergyman?
About 10 *s.* a year, I think.

3496. *Chairman.*] Of course a large number of these fees come from the laity?
Yes.

3497. Bishop of *Ely.*] Then it is not your opinion, is it, that one object of the Bill would be attained to any very great extent, namely, relieving the burden on the clergy?
Yes, I think so; because they do not pay annual sums. It would ease the burden in this way; if, for example, the ordination fee were lowered, it would be a relief to a clergyman coming for ordination.

3498. But if you have only got 13,000 *l.* disposable in the way of relief, and that amongst a large number of men, could you sensibly reduce the ordination fee and other fees; could the reduction be of such amount as to be any suitable relief?
If you could reduce the fees by the amount of 13,000 *l.* a year, you would have to consider what fees should be reduced, and then I think, myself, that the ordination fee should be the first.

3499. What I mean is this: is 13,000 *l.* a year a sum of such an amount, viewed in comparison with the national clergy, as that the remission of that gross sum could, manipulate it as you will, make it any very sensible relief?
If you look upon it as an annual remission to each person in holy orders, it is very little; but I think that it is a sum of money which would enable the framers of the fee table very materially to reduce those fees which do press upon the clergy.

3500. *Chairman.*] Look at it as you please, is it not a remission of between a third and a fourth to all payers of fees who at present pay, both clergy and laity?
Yes.

3501. Earl *Stanhope.*] Supposing the fee by churchwardens is abolished, what reduction would that be on the total amount?
The 5 *s.* fee, do you mean?

3502. Yes?
Am I to assume that it is all paid at the present time?

3503. What amount of the 25,000 *l.* would you put down to the churchwardens' fees; rather more than 5 *s.*?
Thirteen thousand parishes at 5 *s.* each. Then of course there are a number who do not pay. I cannot estimate that.

3504. Earl *Nelson.*] You did estimate that at a certain sum; in that 25,000 *l.* you reckoned the churchwardens' fees?
Yes.

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3505. Can you tell us what sum you did reckon the churchwardens' fees at; the ecclesiastical fees you reckoned at 25,000 *l.* a year; how much of that 25,000 *l.* of existing fees did you put the churchwardens' fees at?

I took it that they paid a half.

3506. Half that they now can?

Yes.

3507. Viscount *Halifax.*] Are not marriage fees, nearly the whole, paid by the laity?

Yes.

3508. Would not any diminution therefore of the marriage fees be a benefit, not to the clergy, but to the laity?

Yes.

3509. Earl *Nelson.*] If you could do it, would you say how much in your calculation of the 25,000 *l.* you put down as received from churchwardens' fees?

I think about 6,000 *l.*

3510. Earl *Stanhope.*] Supposing the churchwardens' fees were abolished, it would not sensibly affect the total amount of the fees?

If the existing churchwardens' fees were abolished, it would reduce the 45,000 *l.* to 39,000 *l.*

3511. Still that would leave a margin for the scheme of the Bill?

Yes. Before your Lordships pass from the marriage license fees, might I say something on a question that has been raised as to its being a civil fee? Several of the witnesses have attempted to make a distinction between the marriage license fees and the other fees, on the ground that the marriage license fees are not ecclesiastical fees. I do not know what depends upon the issue; but I venture to hold that they are as much ecclesiastical fees as any other. In the first place the marriage license fee is granted for an ecclesiastical purpose, namely, for dispensing with banns, which is a requirement of ecclesiastical law. Secondly, it issues under the seal of the bishop's vicar general, and is given, therefore, by an ecclesiastical person. Thirdly, the obligation to pay rests upon the same basis as the other fees; I mean by that, the same basis before the recent Acts of Parliament, that is to say, Archbishop Whitgift's table. And fourthly, this fee has always been paid to ecclesiastical officers as such.

3512. You have heard evidence of the secretary of the Ecclesiastical Commissioners given here the other day?

Yes.

3513. He stated that the duties imposed upon the Ecclesiastical Commissioners were such as could not be easily performed by them?

He said that with reference to the stamps.

3514. No; he referred to various points. The other points were, as far as I remember, these: they thought it was very difficult to draw up the rules and regulations, and also they objected to the 58th clause, as to the necessity of advancing a loan?

Yes.

3515. Do you think that those are points which might be urged with any reason?

The 58th clause requires that the Commissioners should lend from their common fund to the Ecclesiastical Fees Fund certain sums of money, until dropped shares of the Fees Fund fall in.

3516. But the objection raised was, supposing the fees do not amount to a sufficient sum they would not be repaid; therefore they advance money at 4 per cent., without any chance of getting the capital repaid?

It struck me that the charge upon the common fund was very much overestimated. I estimate it as follows: I take the expenses at the very excessive sum of 1.200 *l.*

3517. *Chairman.*]

3517. *Chairman.*] How do you get at this 1,200 *l.*?
I have assumed that the clerks would be about 500 *l.*, and the stationery and the rest of it between 500 *l.* and 700 *l.*; but it is merely a conjectural estimate, and it is very much over the mark, I should fancy. Then, with regard to Section 50, the payment of the remuneration to the existing judge, is 800 *l.*, that is to say, 1,500 *l.*, less 700 *l.* On Section 51, paying the expenses of the two provincial courts, I have said next to nothing, but I have put 50 *l.* for that. Section 53 it is very difficult to estimate; that is the section which gives compensation to officers appointed before the first-recited Act. The principal person is Lord Canterbury.

3518. Is there any one else?
There are a few others, I think.

3519. It was stated in evidence that Mr. Dyke was not one?
No, he is not.

3520. Are there any others?
There is the Vicar-general of York, Mr. Vernon, and also his brother, who is Registrar of the Province of York, Mr. Harcourt; but the principal person is Lord Canterbury, and I do not think that he would suffer at all under the Bill, because the marriage licenses, which are the only fees which would be changed, it is not proposed to put at a lower scale than that which his office now issues them at.

3521. Do you mean proposed by the Marriage Law Commission?
No, by the Bill. If the proposal, which is not in the Bill, but which was in the mind of the framers, that the marriage license fee should be reduced to the Doctors' Commons scale, is carried out, he, of course, will not be a loser; because he now grants licenses upon the Doctors' Commons scale. I put the amount under that clause at 200 *l.* a-year; I think that would be excessive. Then Clauses 54, 55, and 56, although they are put as matters for which compensation may be granted, do not really involve any compensation. Clause 54 enables compensation to be given to officers whose property is transferred; but if the Commissioners did not think it desirable to borrow money for giving that compensation, they would not touch the property in such a way as to give rise to compensation. Clause 55 gives compensation to certain archdeacons; but the archdeacons' fees would be paid into the fund; therefore it is a mere matter of account paying them compensation out of it.

3522. But I thought procurations and synodals would be abolished?
The cost of that would fall on the common fund. Then the remaining one is Clause 56, and it provides that additional payment shall be made to certain officers who perform additional duties, but the performing of additional duties will depend upon a vacancy occurring in existing offices, and, therefore, at the same moment that they have to be compensated, a sum of money will be set free for the purpose of compensating them.

3523. Then how much do you calculate the Ecclesiastical Commissioner will have to advance?
Very probably, to start with, a couple of thousands a year, or perhaps 2,500 *l.*

3524. To go on for an indefinite time?
No; the moment an office fell vacant, the emoluments of which exceeded the emoluments which it might think proper to give to the successor, then there would be the dropped share to come to the relief of the fund.

3525. But is not the fear that the fees may diminish, and that, therefore, the security for the repayment might disappear altogether?
Yes, but the rules and orders would provide that certain salaries should be given to the new officers, and those would be very small under such circumstances.

3526. Earl *Stanhope.*] But the total amount advanced would depend upon the rules and orders that were made?
Yes, but I should not think that it would exceed 2,500 *l.* in the first year.

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3527. *Chairman.*] So that you do not think that there is any greater insecurity than in ordinary investments; better than some and worse than others?
Certainly better than some, and certainly worse than others.

3528. Bishop of *Ely.*] How many years do you think it would be before the clergy obtained the full benefit of the remissions proposed under this Bill?
A very great number of years. I think that I should not live to see the complete carrying out of that measure in the diocese of Ely; but the registrar of the Archdeacon of Huntingdon, who is a younger man, might. I should say it would take 30 years.

3529. Is it the case that the Bill is to be regarded more as a Bill for a wise readjustment of payments than for the administration of sensible relief to the clergy?
A wise readjustment of payments with a view to ultimate reduction.

3530. And that ultimate reduction would be to the amount of 13,000 *l.* a year, that reduction coming into operation at an indefinite time beyond this generation?
Not an indefinite time but an undefined time.

3531. At a time beyond this generation?
Yes; that of course results from existing interests being respected.

3532. That would be due to vested interests?
Yes.

3533. *Chairman.*] Is not that an objection which would necessarily occur at whatever period it was thought well to take in hand a reform of this matter; if vested interests are to be respected, the reduction must always be delayed for about 30 years?
If existing interests are to be respected, no doubt.

3534. So that that is an argument against any legislation, either now or at any future time?
Yes, unless you compensate them at once. Then you would have to borrow money for that purpose.

3535. Viscount *Halifax.*] Does not Clause 38 impose a totally new charge upon the common fund of the Ecclesiastical Commissioners, in the payment of archdeacons without any prospect of their being recouped from the fee fund?
It is not proposed that they should be refunded at any time from the fee fund; it is proposed that this should be an absolute charge upon the common fund.

3536. Is it not proposed that all the other charges imposed upon the Ecclesiastical Commissioners for the time, shall be ultimately repaid to them at 4 per cent. from the fee fund?
Yes, but not this.

3537. *Chairman.*] But why do you draw the distinction between this and the other payments?
This clause is supposed to carry out the intention of the Act 3 & 4 Vict. c. 113, s. 34.

3538. Viscount *Halifax.*] Will you read that clause?
I am not sure that I have a copy of it with me now, but the effect of it was that the emoluments of archdeacons should be raised to 200 *l.* a year out of the common fund when they fell below that amount; and the working of that has been that the Commissioners have not taken into account the falling off of the fees which form a part of the archdeacons' emoluments; consequently an archdeacon whose emoluments were assumed to be 130 *l.* a year would get 70 *l.* a year from the common fund; but the visitation fees and so forth have fallen off, and perhaps he has only got from that source 100 *l.*, and the Commissioners only give him 70 *l.*; so that his total income is 170 *l.*, and not 200 *l.*; and the object of this clause is to enable the Commissioners from year to year to make up his income to 200 *l.* a year.

3539. Do I understand you, then, that no new charge is imposed by this Bill upon the common fund for making up the salaries of the archdeacons?
Yes, under this clause there is. This is the only clause which imposes a charge absolutely upon the common fund.

3540. Is

3540. Is that carrying out, as you understand, the intention of a previous Act, the provisions of which were not sufficient to execute its intention?
Yes.

3541. *Lord Steward.*] Clause 37 of the Bill says that after the passing of the Act no procurations or synodals shall be payable to any archdeacon. Is it intended by that that the procurations or synodals shall be payable to anybody else in lieu of the archdeacon?
No.

3542. Then if the procurations and synodals payable to the archdeacon are to cease and determine, why do the procurations and synodals due to the bishops not cease and determine also?
I cannot answer that question; for this reason, that I have drafted this Bill according to the instructions which I have received.

3543. *Chairman.*] Is it within your knowledge that the Ecclesiastical Commissioners either have remitted, or intend to remit, all episcopal procurations and synodals for the benefit of the clergy who pay them?
I do not know.

3544. Did you not hear it stated in evidence the other day?
No.

3545. As to these archdeacons' payments, do you understand that up to a certain time the Ecclesiastical Commissioners annually increased the payments to archdeacons to 200 *l.* a year?
I heard so in this room.

3546. And do you understand that they ceased to do so on account of a legal opinion which stated that the powers under which they increased the payments to each archdeaconry were exhausted?
Yes.

3547. And that therefore the intention of the Legislature had not been carried into effect?
I understood Mr. Pringle to say that legal advice had been obtained; they found out that they could not do it.

3548. That they had done it for a number of years and could not continue?
Yes.

3549. And that therefore the intention of the Legislature had not been carried out?
Yes.

3550. Viscount *Halifax.*] Is not the provision of the 22nd and 23rd clauses to substitute stamps for fees in all cases?
Yes.

3551. And is it not provided in the 24th clause that the sale of those stamps should be made through the registrars of the dioceses?
Yes.

3552. Are you aware whether stamps in any other cases, for purposes other than the mere purpose of revenue, are now sold through the inland revenue?
Yes.

3553. Not by any other officers except their ordinary stamp distributors?
Yes.

3554. Are you aware of what the amount of stamps so sold, for other purposes than mere revenue purposes, is?
It seems to be 575,000 *l.* a year.

3555. Have you a return in your hand of the different parties on whose behalf those stamps are so sold?
Yes.

3556. How many different parties are there?
There are 28 items in the page.

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3557. Will you mention half a dozen of them?
The Admiralty Court, the Companies Registration Commission, the Copyhold Inclosure and Tithe Commission, the Probate Act, the Railway Commission.

3558. As far as you can judge, could there be any more difficulty in their selling stamps on behalf of the Ecclesiastical Commissioners than on behalf of those persons for whom they at present seem to sell stamps?
No; I think there would be no more difficulty. There were reasons for drafting the Bill as it stands.

3559. Earl *Stanhope*.] But there is an objection urged about the stamps; that it would be difficult to arrive at the registrars for these stamps. Do you think that a difficulty?
No, I should think not; the advance of stamps which the registrar would want could not be more than 200 *l*. on the average; it would be more like 150 *l*.; and they could have stamps to that amount on credit.

3560. How would they send them; by post?
By registered letter to the registrar, once a month.

3561. I meant how would they be sent by the registrar of the diocese to the people wanting them?
It would be easily done. The persons in every case would have documents, and they would have the documents impressed with the fee fund stamp, it being already impressed with the Government stamp.

3562. Earl *Nelson*.] Do you propose that every charge under this Bill should be paid by stamps?
All the fees which go into the fee fund would be paid by stamps; the surrogate's fee, not going into that fund, would not be paid by stamps.

3563. Do the other fees for marriage licenses go into the fee fund?
Yes.

3564. Is it not very awkward to leave the fees to surrogates out?
No, I think not; it would be very inconvenient to pay them in that way. There are clergymen residing at places scattered about, and a person comes to them and pays them their fee at the same time that they give him the marriage license stamped with the fee fund stamp; it already has to bear the Government stamp.

3565. A person who under this Bill got a marriage license with two stamps upon it, would still find to his surprise that he had to pay 5 *s*. to the surrogate?
He would find that he had to pay that, certainly; he would not be in a different position from what he is now.

3566. He would have no benefit on the plea of convenience by this plan of paying by stamps?
No; the person who pays would not.

3567. Bishop of *Ely*.] Do you see any practical inconvenience in the system of paying by stamps?
No; I see none whatever.

3568. Do you see great advantages in it?
I see great advantages.

3569. Would you mind stating to the Committee some of the advantages that you see in the system of payment by stamps?
I think it would simplify the accounts; it would simply be that the registrar would have to return either stamps or money to the Ecclesiastical Commissioners at the times arranged. Then it certainly would be a check against irregular charges, by which I mean charges which are not now in the table of fees, but which are made. It is in evidence that there are such irregular charges made. A person would simply pay the sum, and the registrar would have to hand it on in the shape of a cheque for the used stamps, and there would be no means of making an additional charge.

3570. It was stated by one of the witnesses that inconvenience would result from

from the fact that the office would have to lie out of money for a considerable time, whilst office expenses were going on; is that so?
It would be so; but that is common to many other offices and businesses.

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3571. And could that be met in any degree?
It is met, I think, in the Bill which, although it indicates that the salaries shall be paid once a year, says that they may be paid oftener, and they might be paid once a month.

3572. Earl *Nelson.*] Would not a system of payments by stamps require an uniform charge of fees for all dioceses?
No, I think not.

3573. Viscount *Halifax.*] Would you expect the Inland Revenue to be at the trouble of preparing different stamps for all the different dioceses of England for the same purpose?
I suppose the stamps would be for certain sums of money, 5 *s.*, 2 *s.* 6 *d.*, and so forth; and it would be only a question in the different dioceses what number of these stamps should be put upon the particular document.

3574. Earl *Nelson.*] But if that was the case, there would be no security against overcharge, would there?
Yes, I think so; because there would be a table of fees in each registry.

3575. If the stamp was not given for a certain thing, surely the registrar in one diocese might put on two 5 *s.* stamps instead of one?
If he put on the stamps, he would have to pay for them.

3576. But still it would be necessary to have an uniform charge for each thing in all dioceses, would it not?
No, I think not; there would be a table of fees in each registry, and I think that the charge for each document should be printed upon it. Of course, there would be some little difficulty in it.

3577. Viscount *Halifax.*] Supposing churchwardens' fees not to be abolished, do you think it would be a greater convenience to a churchwarden to have to procure a stamp beforehand, rather than pay his fee on admission?
The churchwarden's certificate, I think, would be sent to the clergyman beforehand, and the churchwarden would pay for it on the spot, under Clause 42.

3578. In that case the churchwarden would have the trouble of procuring the stamp instead of paying his fee when he was admitted at the archdeacon's court, would he not?
Yes.

3579. Would that be a convenience to him?
No.

3580. *Chairman.*] Where would he procure it?
I think the registrar of the diocese would send it to the chairman of the vestry.

3581. Viscount *Halifax.*] Would not that impose the necessity upon the clergyman of paying for the stamp before he procured it?
No, I think not. After the Easter Tuesday he would send back the unused forms and a cheque, or a Post Office order, for the balance. No doubt, upon Clause 42, the stamp system would not work with the same amount of ease with which I think it would work in the other parts of the machinery.

3582. *Chairman.*] On Easter Tuesday two stamps of the value of 5 *s.* would be required, as I understand you?
One stamp.

3583. The clergyman would provide himself with that at the nearest place, and the churchwarden would pay him 5 *s.*, and there would be an end of it?
Yes; but the difficulty about the payment of stamps there does not arise from the stamp system so much as from Clause 42, which requires that no person shall be admitted to office until he produces a certificate. If he has got to produce a certificate there is no greater difficulty in producing a stamped certificate. If your Lordships should be of opinion that Clause 42 should come out, that

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the payments should be made, as at present, on admission, then the difficulty about the stamp system in that respect falls to the ground, because there would be no more difficulty in procuring the stamps at the visitation than there is now in paying the money into the registrar's pocket. But if you keep Clause 42 in its present form, requiring a certificate before admission, then the stamp question does not add to the difficulty.

3584. Is it your opinion that this system of stamps would prevent the sending in of bills with mileage and other charges of a somewhat doubtful character, which at present come from the bishops' secretaries in some dioceses, to the clergy and others?

Yes, it would absolutely put an end to that; there would be no payments whatever except payments by stamps.

3585. *Lord Steward.*] Would you explain why that would do so?

Now a bill is sent in by the registrar, and one thing gets mixed up with another, and the total is paid; but under the proposed system no bill would be sent in by the registrar, the person would simply pay the amount he sees on the document.

3586. These payments for mileage, assuming that they have been demanded, would be demanded in time to come just as much as they have been in time past, would they not?

No.

3587. Why would the adoption of stamps for ecclesiastical fees prevent the bishop's secretary or registrar, having acted in the capacity of solicitor, from making the customary charges?

I did not understand that this mileage charge was such a charge.

3588. Charges similar to mileage charges, I will say?

Under the Bill the whole of the payments for any given ecclesiastical act would be stated in the table of the fees, and stamps to that amount would appear upon the document; the person receiving the document would pay to the registrar the value of those stamps, and nothing more.

3589. But that would be for the purely ecclesiastical formal business; and in addition to that, it has been stated in evidence that the bishops' secretaries and registrars make additional charges that are not comprised in the table of fees, for expenses out of pocket; how would the payment of fees by stamps prevent the bishop's secretary or registrar making these charges in his capacity as a solicitor?

The payment by stamps would not do that, certainly; but the effect of the Bill would be to prevent that altogether.

3590. *Chairman.*] Would not the sort of relation which at present exists between the persons who pay the fees and these officials be so far altered, that the official could no longer represent himself as acting as an attorney for these persons?

Yes, and that is one of the points aimed at in the Bill, that that practice should be put an end to.

3591. Earl *Nelson.*] But in drawing up the duties that a registrar has to perform for the salary to be given under this Bill, would it be possible to put in the payment of a fly for certain distances whatever they might be?

It appears to me that it is done at present in the existing table. The registrar's fee in consecrations includes the necessary attendance at the consecration; and therefore his expenses in getting there are paid by him out of the fee. Certainly I always pay my expenses out of the fee I receive, and I fancy it is the same with the registrar, so that there would be no difficulty whatever in saying that he is not to charge travelling expenses.

3592. Then in calculating the sum which should be paid these officers in comparison with the sum they now receive, you have not taken into account these extra charges for mileage, and the like, which are customary?

In making the calculations I have taken the Blue Book, and in that it is more than once stated that there are considerable out-goings, including travelling expenses, and so forth; and, I presume, that where these gross receipts

receipts are given in the Blue Book; it includes the payment of mileage. I did not quite understand on what occasion the mileage was demanded which was alluded to in the evidence of Mr. Raper. It appeared to me that it should have been the work of the apparitor to affix the citation on the church doors, and not that of the clerk.

3593. Lord *Hatherley.*] Is not the principle of payment by stamp that of exercising vigilance between the receiver of the stamp and the fund?
Yes.

3594. So that the fund may be sure to receive what the receiver, the collector of the fees, has himself received?
Yes.

3595. Viscount *Halifax.*] Have you seen a Paper which has been put in before this Committee, marked Appendix B., stating the amount of ecclesiastical fees according to the Parliamentary Return?
Yes.

3596. If I understand you aright, you estimate the probable amount of fees at very much less than that?
Yes.

3597. What is the amount in that Paper?
£. 71,000.

3598. Did I rightly understand you to say that your estimate was 45,000 *l.* only.
No; the Paper relates to the old Blue Book, the Blue Book containing the years 1867, 1868, and 1869. I have examined that Blue Book more than once with a view of ascertaining what the real amounts were, and I have been unable to come anywhere near these calculations. I hold in my hand my own calculations, made some years ago.

3599. *Chairman.*] You are aware that a much larger calculation has been made than 45,000 *l.*?
Yes.

3600. Why do you reject the larger calculation?
Because from my examination of the Blue Book, I make out that it is 55,500 *l.*

3601. Viscount *Halifax.*] What is your estimate for the new Blue Book?
My estimate for the new Blue Book, excluding the surrogates' fees and the archdeacons' is 45,000 *l.*

3602. What is your estimate for the new Blue Book, including all the fees?
About 57,000 *l.*

3603. What do you exclude in order to obtain the sum of 45,000 *l.* in the class of fees?
I get that figure, because I only take those fees that will come into the Ecclesiastical Fee Fund. Under the Bill, the surrogates' fees will not do so, and the archdeacons' fees only come into it on one side, to be paid out of it on the other.

3604. *Chairman.*] What is your reason for considering that other calculations which you have had laid before you are beyond the mark?
Because I have examined the Blue Book upon which they were based, and I cannot make the amount to be more than 57,000 *l.*

3605. In the Blue Book which you take as your own guide are all the returns made, or are there some still not made?
The Blue Book of 1875 is extremely defective in archdeacons' returns; it only contains 29 out of 70.

3606. So that there may be a large sum to be added to the 45,000 *l.* for those archdeacons' fees which have not been returned.
No, I made an allowance for that.

3607. Do you still adhere, after all that has been brought before you, to the opinion that it is well to bring in the Ecclesiastical Commissioners as the distributors of these stamps?

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I do not see that there would be any difficulty in it; that difficulty which was raised as to their not receiving cash is, I think, met by clauses of the Bill, the effect of which is, that the registrars could pay at once into the Bank of England the amounts that they have to pay.

3608. Who is to supply the stamps to the Ecclesiastical Commissioners?
They would procure them, as Mr. Pringle said, by contract.

3609. Why should they not be obtained, as other stamps are obtained, direct from the Inland Revenue?
It was thought that as this is a purely ecclesiastical matter, it would be well not to mix it up with those matters for which the Inland Revenue provide stamps in other ways.

3610. Is that a matter of sentiment?
I cannot say; I was instructed to take out from the original draft of the Bill the Inland Revenue.

3611. Then you had at one time provided in the Bill that the Inland Revenue were to distribute these stamps?
Yes.

3612. Did you think that the better plan, independently of the sentiment?
I think the sentiment is important; and I also think that people would mix up the two things still more if it were done through the Inland Revenue.

3613. Would they be more ready or less ready to purchase them?
It would increase their objections to paying the ecclesiastical fee stamp, whereas under the plan proposed there might be some hope of persuading them to distinguish between the two.

3614. Does the Government wait for persuasion in collecting revenue?
No; I was rather speaking of those persons who have to deal with the clergy, and hear from them complaints of the fees. May I call your Lordships' attention to the fact that there is an Act of Parliament, of the year 1869, which enables local authorities to collect their fees and fines by stamps; and there the stamps are not sold by the Inland Revenue, but in the way proposed by the Bill. The Bill is drawn upon that model as to stamps being approved of by the Inland Revenue. The Act to which I refer is 32 & 33 Vict. c. 49; it enables county and borough treasurers to collect fees, fines, and penalties by stamps.

3615. Viscount *Halifax*.] Are you aware whether that has ever been acted upon?
I cannot say.

3616. Would it not in all cases be a great convenience that stamps for all purposes should be procurable at the same office?
The person who bought the stamps would have to go to the registry in order to get the document; he would not be saved the trouble of going to the registry by buying the stamps at the Inland Revenue; he would simply take the stamps from the stamp distributor to the ecclesiastical officers.

3617. Are you not aware that the registrars object to be made the distributors of stamps?
Yes; but I never could see the force of the objection.

3618. Is there any reason why it should be imposed on them if they are unwilling, and if it is equally convenient to go to some ordinary stamp distributor?
Not if the objections against the Inland Revenue are not thought valid; but as to the objections raised by the registrars, it must be remembered that they now procure the Government stamps, and they are obliged to do so, under the Table of 1857, for the documents which bear a Government stamp under that Table. I mean that they do sell Government stamps to persons who buy ecclesiastical documents from them at the present moment; and, of course, as solicitors, they do so; they are distributors of stamps in that way.

3619. That is to say, in such cases as you are now alluding to, the person who comes to obtain a document from them obtains it ready stamped from them, for which stamped documents they have paid?
Yes.

3620. Is

3620. Is there any difference between this and what constantly takes place in obtaining a deed from your solicitor which is stamped?
None whatever; and I may mention that the patent of my appointment as Chancellor of Ely was obtained for me by the secretary of the Bishop of Ely, and it bears the Government stamp.

3621. Just look at the 16th clause of the Bill; does not the 16th clause of the Bill enable one person to hold the offices of vicar general and chancellor and registrar?
It never struck me so, until it was suggested in this room. I have ventured to put on paper some amendments which seem to me desirable from what I have heard during the discussion; and I have added words to that clause to make it quite clear.

3622. Is there not an objection to the same person holding the office of chancellor, who is a judge, and of a registrar, whom we consider to be an advising officer?
Yes, it was never intended for a moment that that should be the case.

3623. Earl *Nelson*.] You do mean that a registrar may hold any number of registrarships, or a chancellor may be chancellor of any number of dioceses?
Yes; it is very important with reference to the registrar; because I think that the working of this Bill would be, that very possibly the bishops might wish to have one of their registrars in London; and that by a small payment from each salary, the same person might hold the office of registrar to a great number of bishops.

3624. *Chairman*.] But how could a man be registrar of Durham, and live in London, and perform his duties?
He could not be sole registrar; but the bishops might wish to have in London a joint registrar, at a very small remuneration.

3625. Earl *Nelson*.] Would not that same object be attained by having a separate salary for the bishop's secretary and the registrar, so that the offices could be held together or could be held separately; I mean the object of the bishop having one registrar in London?
I think they could have an officer in London who might be called a secretary; but I think it extremely desirable that the two offices of a secretary and registrar should be united.

3626. *Lord Steward*.] In the Memorandum which you put before us, on page 1 I see you say, "The consolidation of these offices would lead to great simplification of working, and to the avoidance of many difficulties which now arise from divided responsibility;" will you tell us what some of those difficulties have been?
If your Lordship looks at the Table of Fees, you will see that the work of the registrar and that of the secretary overlap many cases; and it is always a matter of doubt and difficulty to which officer any particular thing belongs.

3627. When you say that they overlap, who assigns the various duties of registrar and bishop's secretary; I am talking of the existing law?
The Tables assign them in some cases, and then custom does in others.

3628. Then do you mean that inconvenience has arisen from the working of those Tables of Fees?
From those Tables combined with the custom of the various offices.

3629. Who has prepared those Tables?
They are signed by the two archbishops and the Lord Chancellor.

3630. Then you think that in the preparation of Tables of that description a little more local knowledge is necessary than appears to have been possessed by those who prepare the Tables; because you tell us that many difficulties would be avoided by the plan that you proposed; I want to know how difficulties have arisen?
A very great difficulty is, that very much depends upon the individual characters of the two officers. If the registrar likes his work and wishes to do it thoroughly, he of course likes to do as much as he can, and the secretary likewise;

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wise; and I know from my personal knowledge that there are difficulties in the matter.

3631. Do you mean that each tries to get business into his own hand, or that each tries to avoid business?

I think that they try to get business into their own hands, not for the purpose of getting fees, but for the purpose of doing the work.

3632. Can you instance any other difficulties, because you say there are "many" difficulties which have arisen; one is the overlapping of business, you say?

Then there is the doubt as to which person certain classes of business belong to. In one diocese there is that doubt at the present moment as to a certain class of business, as between the registrar and the secretary.

3633. Does it signify very much, practically, to which of these two officers the business is entrusted?

Yes, I think so; it leads to differences of opinion, and so forth, between them about it.

3634. Then, in point of fact, the difficulties to which you refer would be avoided by confining each of these two parties to their proper sphere?

Where you can define it; but of course in an office of that nature, there are duties that cannot be defined; and where you have one person, then the difficulties vanish.

3635. Will you instance the class of business to which you allude?

I am thinking of this, of the bishop consulting the registrar or his secretary upon any matter.

3636. How would a difficulty arise in that respect; do you propose that the bishop should only have one adviser instead of two?

Yes.

3637. But then you would still leave him the opportunity of going to his chancellor?

Yes; that is a different thing altogether. The difficulty does not arise there; but it arises between two persons, both solicitors in the same position; and I have known cases where there has been that difficulty.

3638. *Chairman.*] Is not this very much the case, that the secretary is almost in daily attendance on the bishop, that the bishop gives to him the business, and then he sends what he pleases of it to the registrar?

It is so in some cases.

3639. That would be the case very much in London?

In London it would.

3640. Earl *Nelson.*] But not the case where a bishop, living away from London, appoints a secretary residing in London?

No.

3641. *Chairman.*] Then we had it stated, I think, by one witness (I am not sure whether it was not by Dr. Deane), that the record of ordinations was kept by the registrar. Are you aware whether that is the custom in most dioceses; it seemed to be a doubtful point, whether they are kept by the registrar or by the secretary?

It is doubtful.

3642. The fact of the act book and the register being kept by two different persons makes of necessity a confusion?

Yes.

3643. *Lord Steward.*] Is it proposed under this Bill to fuse the act book of the diocese into the register?

The register kept by the registrar is, I presume, twofold; the one contains the acts of the court, and the other is a collection of such other acts as he is required by law to register in the office, such as matters under the Dilapidations Act, and so on.

3644. What is the act book?

It

It was described by Mr. Lee to be a record of all the personal acts of the bishop.

3645. Does your knowledge, as far as it extends, correspond with Mr. Lee's in respect to the act book?
Yes; I have seen one within the last two days.

3646. And you think all act books are alike; that is to say, that the distinction between an act book and a register is the same in each diocese?
No; I cannot say that in every case. The one I allude to was like that of Ely.

3647. And each differed correspondingly from the corresponding register, did it?
The register that would be kept in the registry would be the register of the Consistorial Court. Mr. Lee is secretary to five bishops, and he described the act book in general terms. I gathered from his evidence that his description was not meant to apply particularly to the Canterbury Act Book, but to a description of the act book generally.

3648. Earl *Nelson*.] You would propose to turn Mr. Lee into a deputy registrar; is that so?
No; Mr. Lee would not be touched.

3649. But a person in his position would become a deputy registrar?
A joint registrar; a London registrar.

3650. Sharing the income given to the main registrar?
That is only my notion of the working of the Act.

3651. But would not that be another way of dividing the salary of the registrar between the bishop's secretary and the registrar?
If the plan of a London registrar were carried out, which is not in the Bill, it would be to a certain extent; but the amount of the emoluments would be very different, and the work also. The only object of such an arrangement would be, that the bishops, when they came to London, should have somebody to consult upon current matters; but not that the registrar resident in London should keep the act book of a country diocese; not anything of that kind.

3652. *Lord Steward*.] But if the offices of registrar and secretary are united, the bishop, when he came to London, would not have the advantage of consulting a registrar and secretary?
No; nor has he now, except in a few cases.

3653. The present system gives the bishop the opportunity of uniting the offices of registrar and secretary if he wishes; it also gives him the opportunity of keeping them separate if he so wishes. Why is it necessary to apply an uniform rule in every case, and to say that the offices of registrar and secretary shall henceforth be invariably united?
Some of the reasons were those which have been stated, as to the simplification of working, and as to the doing away with difficulties.

3654. The simplification of working cannot be increased in those cases where both the offices are held by the same person?
No; that is so.

3655. On the other hand a case might occur when the working of the two offices might be simplified by their being held by different people; in the case of a secretary residing in London, and the registrar being the local officer for instance, the registrar must be the local officer?
Yes. It was pointed out by Mr. Lee, that where the two offices are united there is great economy in working the offices. He mentioned that if the office of registrar of the province and secretary of the archbishop were under one roof they could be worked together.

3656. And when the bishop is of that opinion he can appoint the registrar as secretary?
When he thinks that the registrar is a fit person to hold that office.

3657. With regard to the fees under the Dilapidations Act, is there any reason why

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why the registrar and the bishop's secretary should each have fees payable under that Act?

Under the Dilapidations Act the bishop's secretary is not once named, excepting that it is said that fees may be paid to him; the registrar is named, I think; the registry certainly is, and fees are given to the registrar for registering papers in the registry of the diocese.

3658. Then does the bishop's secretary receive no fees under the Dilapidations Act?

Yes.

3659. For what purpose?

For passing the papers through the bishop's hands.

3660. Is there any reason why that should not be done by the registrar in respect of the fees which he receives?

The registrar might do the work, certainly; that would be one of the results of the fusion of the two offices, there would be but one person to receive the fees.

3661. You are aware that this Bill unites the office of registrar with that of secretary, and does not deal with the fees under the Dilapidations Act?

Yes, it does, excepting as regards surveyors.

3662. So that the offices of registrar and secretary being united the person holding the joint office is entitled to receive double fees?

That portion of the Dilapidations Act which refers to the fees of the bishop's secretary and registrar is proposed to be repealed; so that the Table of Fees would deal with the subject; that is in Schedule E.

3663. *Chairman.*] Has this fusion of the two offices been in almost all Bills which for the last few years have been brought before Parliament?

I cannot answer that question directly; for I cannot make out from the Bills of 1869-1872 whether that was really proposed in them. I should have gathered that it was, if it had not been that amongst the payments which were suggested to be made out of the 70,000 *l.* a year, a payment to the bishop's secretary is included.

3664. Does it appear to you that the real difficulty in the union of the two offices is, that the one is at present held for life, and the other at the pleasure of the bishop?

Yes, that is the difficulty.

3665. Have you any opinion, if one is to give way to the other, which principle ought to prevail?

I am strongly of opinion that the tenure should be during pleasure.

3666. Will you state your reasons for considering that a person holding the united office under the Bill ought to hold it at pleasure?

Practically, it is the bishop's secretary who is retained, and not the registrar; the work of the registrar is very small indeed; the work of the bishop's secretary is very considerable; therefore, if one tenure is to give way I submit it should be the tenure of registrar. It is extremely desirable that the person holding the joint offices, as I have said in my paper, should be able to work in harmony with the bishop, and, I ought to have added, with the clergy also.

3667. Earl *Nelson.*] The registrar is to be by this Bill the registrar also of the archdeacon?

Yes.

3668. Do you not think that his office, as registrar to the archdeacon, would be somewhat interfered with, if he was removable at the pleasure of the bishop?

No, I cannot see that at all, for the registrars to the archdeacons at the present moment do not hold office from the existing archdeacons necessarily, and they cannot be dismissed by them. There is no connection, I think, between the office of judge and the duty of appointing a registrar. The chancellors of dioceses never appoint the registrars in any case; and the judges, with the exception of the presidents of the various divisions, and the Lord Chancellor, and the Master of the Rolls, do not appoint the officers of their courts.

3669. But

3669. But are not the registrars official advisers of the archdeacons?
Yes, to a certain extent, they are.

3670. *Chairman.*] Are they more so than they are of the chancellors?
No, just the same.

3671. Is there any other reason why you think that the office should be during pleasure?
I think that the holder of it should be easily removable.

3672. Why?
At the present moment they are practically irremovable.

3673. And you object to the present system *in toto*?
Yes, *in toto*; but it appears to me that he must be not only easily removable, but removable for a cause which, in some cases, could hardly be very well assigned upon paper; because it is absolutely essential that he should work well with the clergy; and there may be reasons why he does not do so which, although they might be patent to people, could not be put upon paper.

3674. Lord *Hatherley.*] Have you any instance present to your mind where the evil has been found of having a registrar not in harmony with the clergy?
Yes.

3675. *Lord Steward.*] And how has that difficulty been got over?
To a great extent by this fact, that in that case they go to the bishop's secretary.

3676. That shows the convenience of not uniting them?
Yes, it does.

3677. *Chairman.*] But did you never hear of the bishop's secretary being unpopular with the clergy?
Yes; they very often do nothing but grumble in that case.

3678. *Lord Steward.*] They sometimes go to the registrar in such a case, I suppose?
Yes.

3679. *Chairman.*] Is there anything with regard to the Bill which you wish to draw our attention to?
There is a great deal more that I should like to say. The objections to the tenure during pleasure I venture to think have not been such as should alter the wording of the clause; that is one point. Then as to the power of uniting the registrarships of the province and diocese of Canterbury; there was stress laid by Mr. Dyke on that question.

3680. You think there is no difficulty in uniting the offices?
No; none whatever, I think.

3681. How would you get over that difficulty of persons coming to Doctors' Commons by old usage for licenses?
I think the office could still be there. The office of the archbishop's secretary is in Westminster; it might be removed to Doctors' Commons very easily.

3682. *Lord Steward.*] Would that be as convenient for the archbishop?
I should think so, quite. The work is office work principally; the only difficulty is the registry at Canterbury; there would have to be a joint registrar there, just as now there is a deputy registrar; and the deputy registrar at the present moment is registrar to both the archdeacons; so that it would only continue the present practice. I should also very much like to have pointed out to your Lordships that the objections to the tenure during pleasure have appeared to me, I venture to say, not to have been sustained in the evidence which has been given before you. I had stated in my paper what I thought those objections would be, and they have been so stated here. I think the duties have been stated to be *quasi* judicial. If your Lordships would look at the Blue Book of 1870, where the duties are stated at length, on pages 7 and 110, you would see, I think, that they are none of them judicial duties. The only possible judicial duty that a registrar has to perform is the duty of taxing costs in opposed cases, and that is done under

Mr. *Brunel*, D.C.L. 3rd April 1876.

direction of the judge; but all his other duties are not judicial, I venture to think, in any sense of the term. Then as to the custody of the records, it has been said that he should have the tenure during good behaviour in consequence of those duties. But I think that has been rather misunderstood. The ancient records of a diocese are put away; for example, those of the vicar general's office are at Lambeth, not practically in the custody of the registrar of the province; and the current records are kept in the office of the registrar, or deputy registrar just as any other solicitor's deeds are kept.

3683. Lord *Hatherley.*] The statement was, that unless there was a local public registry office provided, where the documents should always remain, there would be an inconvenience, from having one solicitor this year, and another solicitor two or three years after; that the documents got shifted?

Yes; but that is now the case with the deputy registrars who in 10 registries, at the present moment, hold the records. It is the case with the bishops' secretaries at the present moment; and even with regard to the diocese of London at the present moment, it is in evidence that the records of the diocese of London are kept in the private house of Mr. Shepherd; so that holding the office on a perpetual tenure does not get rid of that difficulty. Then as to the difficulty of finding good men, the answer is, that in the case of deputy registrars and secretaries, no such difficulty has been found.

3684. Earl *Nelson.*] There was one statement that was made by Dr. Deane about the estimate of the proposed remuneration to the vicar general, the commissary of the diocese, and the official of the archdeaconries in Canterbury. If you remember, it was a long answer; but the effect of it was that he estimated, with the outgoings for rent of offices and payments of clerks at 500 *l.* a year, it would barely amount to 100 *l.* a year?

I think he included the payments made to surrogates out of that, which, under the Bill, would not be paid out of the 500 *l.* As I heard him, I understood that to be the mistake.

3685. It would be an addition; the fees would still be received?

Yes. Your Lordships have had before you a proposition for a diocesan fee fund. Perhaps I may state my objections to that. In the first place, I think that it would add to the expense of the working of the whole; that each fund would be more expensive than the part of the whole which it represents. Secondly, I am sure that there would be great dissatisfaction in a diocese unless the fees in that diocese were reduced to the lowest fee in any other diocese.

3686. *Lord Steward.*] Why do you say that; because I do not think it is in evidence that the fees in the diocese of Chester are the lowest, and yet it is in evidence that the fees there are paid with great regularity?

Yes, but I think that is under an old system; but under a new Act of Parliament people would look at the various tables, and the tendency would be to put great pressure upon the managers of the fund to lower the fees to the lowest point.

3687. Why should that be so more than at present?

It is very much so at present. There is pressure in the diocese of Ely to reduce the faculty fees to two guineas. Then, passing to another point, I do not know how the diocesan board would be composed, but I think that there would be great objection in the salary of the chancellor being determined by archdeacons and proctors in convocation. Certainly the chancellor could never attend at any meeting at which his own salary would be under discussion; and I think that the result of the arrangement would be that the board of management would be the most unpopular body of persons in the diocese; they would be constantly exposed to pressure.

3688. Do you think they would be more unpopular than those who have drawn up the Table of Fees under the Dilapidations Act?

Yes, I think they would; but my experience of that Act is that I should not like to see the unpopularity of officials increased by their being placed on another board for settling fees.

3689. Earl *Nelson.*] Would it not be possible to have the maximum fees drawn

drawn up by a central body, permitting a diocesan fee fund committee to regulate fees below that sum in their particular diocese?

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Yes, it would be possible; but I should think that the better plan would be to have a separate table for each diocese, supposing that uniformity of fees were thought to be objectionable.

3690. Bishop of *Ely.*] Would it not be possible, under Clause 40, so far to modify the body of high personages empowered to make rules and orders, by admitting amongst them the bishop of each diocese when that diocese is dealt with, so as to have a local representation of the district whose fees were under consideration?

Yes, certainly.

3691. Do you think that would be an improvement to that clause, supposing, I mean, that the fees are not to be uniform throughout all the dioceses of England?

Yes; I think, under that supposition, it would be extremely desirable.

3692. *Lord Steward.*] Has it occurred to you that if all the bishops of all the dioceses are to meet these high personages on a given day, and a proposal is made for an uniform Table, the number of bishops who might object to that might entirely outvote these high personages, whose opinions would be in a very small minority?

Some of their Lordships might think that a uniform Table was desirable. As to Clause 39, as to the meeting of persons to consider upon the working of the Act, I have put upon paper an amendment to meet the opinions expressed here as to the archdeacons and proctors of convocation being members of that meeting. I think that is a very valuable suggestion.

3693. Earl *Nelson.*] From every diocese?

Yes; of course it would add nominally 50 to the number.

3694. *Chairman.*] Are there any other points that you wish to draw attention to?

A great deal has been said about the width of the power of the rules and orders under sub-section 1 and the other sub-sections of Clause 40; I see that objection to the first sub-section; in fact, it enables rules and orders to be prescribed to affect the provincial judge; that was never intended. I should propose that it should run, "for prescribing the duties to be performed by any registrar or other officer," which would exclude officers higher than the registrar. Then the second sub-section, as the Lord Steward pointed out, might allow the records of the diocese to be taken out of the diocese into the province. It never struck me that it would do that, reading it in connection with the other sections; but of course if anyone reads it so, it is a reason for altering it. Then as to the third sub-section, there should be certain words put in to exempt articles of inquiry and investigations at visitations. Then in sub-section 5, I have suggested that the candidates at the election of proctors should pay for the expense; the Bill does not state anything about it.

3695. *Lord Steward.*] Who pays for the expenses on those occasions now?

The various diocesan officers, out of their own pockets.

3696. If they pay them now why should they be relieved?

I think it is very unfair that they should pay them.

3697. They now make the payments?

Yes; but the salaries would be modified. In some dioceses I find from the Blue Book that the candidates pay. At Cambridge there was a bye-election in 1873, and the registrar there had to pay for the hire of the town hall, in order to accommodate the large number of clergy who came; at the general election the election was held in the cathedral at Ely. May I state what I consider to be the effect of Clause 42, as to the admission of churchwardens? The alteration from the existing law is simply this, that it makes a condition precedent to admission, that which is now a duty consequent upon admission; that is to say, it requires that the fee should be paid before a person can be admitted to office, whereas now, after he is admitted to office, he ought to pay the fee.

Mr. *Brunel*, D.C.L. 3rd April 1876.

3698. Lord *Hatherley.*] If he has got a fund to go to?
Yes.

3699. *Lord Steward.*] How would you propose to give legal validity to the acts of a churchwarden, who, by neglecting to provide himself with a stamped certificate, does not fulfil your condition precedent?
He would have that amount of position which he has now before he goes up for admission, but no more.

3700. In the event of his making a presentment, would you imagine that presentment to be legal?
There is some doubt upon that point.

3701. In your memorandum you say, "it has been said" that their acts might be sustainable, but you have not said by whom that has been said?
"In case of persons appointed for the first time, it has however been said that their acts before admission might be supported as the acts of officers *de facto*;" that was said in the case of Bray *v.* Somers (2 Best and Smith, 382).

3702. Earl *Nelson.*] That is under the existing law; if we passed this clause, and it became law, there could be no doubt whatever, could there, that a churchwarden who had not paid the fee was not able to make a legal presentment?
I do not think that it would alter the position of the churchwarden until he came up for admission, and then he could not be admitted until he produced the certificate. That is the only effect that I think it would produce.

3703. But not being admitted, he could not act legally as a churchwarden?
Subject to that observation of the Court of Queen's Bench in the case referred to, that his acts might be supported as the acts of an officer *de facto.*

3704. *Lord Steward.*] That was an *obiter dictum*, was it not?
Yes; I meant that your Lordships should infer that from the way in which I put it, in using the words "it has been said."

3705. Bishop of *Ely.*] Are you of opinion, from what you have heard in evidence, that the 5 *s.* fee from churchwardens should be remitted?
I thought so until I heard the evidence from the northern parts of the country. My first opinion was shaken by hearing of the great facility with which the fee was collected there.

3706. *Lord Steward.*] That churchwarden's fee is exactly the fee described by Blackstone as being precarious, is it not?
Yes. There is some little doubt whether the recent case of Veley and Pertwee applies to more than the registrar's part of the fee, or whether the official and the apparitor have not a better claim to their share than the registrar has.

3707. Earl *Nelson.*] Do you not think the archdeacon's fee at visitation would be more regularly paid if some diocesan authority had the regulation of it?
No; I cannot say so. It has been practically tried by not exacting the statutable fee. That does amount to the bishop and the officers and archdeacons constituting themselves the diocesan body; and your Lordships have it in evidence that in the archdeaconry of Winchester, where the fee has been reduced to 5 *s.*, it is paid worse than ever. My experience is, that the persons in the diocese of Ely who pay worst are those who formerly ought to have paid more than 18 *s.*

3708. Bishop of *Ely.*] Do you think that the evidence from the North, the diocese of Chester, with regard to the payment of churchwardens' fees, goes to show that one uniform system throughout all the dioceses would be unwise?
No; I think that my feeling would be to abolish the visitation fees altogether.

3709. To abolish them even in those dioceses of the North where they are so cheerfully paid?
I think if they were abolished in any part of the country, they would not be cheerfully paid in the North; that is my fear.

3710. *Chairman.*] Does it appear to you just that they should be taken out of sources contributed for the maintenance of the fabric?
I think that it is very fair to take them out of any general fund which takes the

the place of the old church rate. I do not agree with the Dean of Lichfield, that the offertory collection should be appropriated for that purpose, although I know it is often done so.

3711. Do you think it right that the offertory collection should be appropriated for the maintenance of the fabric?
No, I think not; I am speaking of the offertory strictly.

3712. *Lord Steward.*] Do I rightly understand you to say that you would not allow an offertory to be devoted to the building of any particular church?
I do not think that it is a proper application of the money collected previous to the administration of the Holy Communion.

3713. Then, *a fortiori*, you would not allow it to be applied to the purposes of the Incorporated Church Building Society?
No.

3714. For many years the Incorporated Church Building Society had a Queen's letter?
Yes; I have no personal objection to it, but I do not see that it comes within the rubric.

3715. Earl *Nelson.*] Then however proper it may be to get money for the payment of these fees from money collected for church expenses, if that money is collected voluntarily, the Legislature can have no power over it?
No. Persons would not give to a fund which they do not approve the application of; at least, I should think so.

3716. *Chairman.*] But a fund being collected, is there anything improper in the Legislature saying how it is to be expended?
If the fund is collected to supply the place of the old church rate, I see no impropriety in the visitation fee coming out of it.

3717. Is there any other point which you wish to bring before us?
There is the question of the compensation to officers, and the claim that has been advanced. I do not mean the claim advanced to-day, but the claim advanced that you ought not to touch the marriage license fees without giving compensation to the officers. Mr. Lee advanced that, I think. I think the answer to that is, that the marriage license fees stand upon exactly the same footing that all the fees did previous to the Act of 1838, namely, upon Archbishop Whitgift's Table, and upon usage; and that, under the Acts of 1838 and 1867, the fees affected by those Tables were much lowered in many cases, and no compensation was given by Parliament to any officer. And it is a question whether lowering the marriage license fees will or will not diminish the fund.

3718. Is there any other point which you wish to bring before us?
May I be permitted to put in the amendments which have suggested themselves to me during the progress of this inquiry? and also, I have drawn up a Table, showing the effect of the repeals of the Schedule.

3719. Are there any others besides those you have mentioned?
I have mentioned the principal ones.

[*The Witness hands in the Papers referred to.*]

The Witness is directed to withdraw.

Mr. ARTHUR JAMES DAY, is re-called; and further Examined:

Mr. *Day.*
3rd April 1876.

3720. *Chairman.*] I BELIEVE you have brought with you, and are prepared to put in, the Paper which you sent on Friday through Mr. Gates?
Yes.

3721. It is a statement of the fees paid through your firm by your clients for presentation to Crown livings?
Yes.

[*The Witness hands in the Statement, which is as follows*:—]

Mr. ARTHUR J. DAY desires to call the attention of the Select Committee to the heavy fees due to the Home Office, the Attorney General, and at the Presentation Office, on Crown Presentations to Rectories and Vicarages, of small value,—to which the Prime Minister for the time being recommends. Even if such livings are below 100 *l.*, or even 50 *l.* a year, in value, the Home Office and the Attorney General fees, are just the same as in the cases hereinafter set forth.

These items are best illustrated by handing in copies of the two following sets of payments, one in the Diocese of Exeter, and the other in the Diocese of Peterborough:

DIOCESE OF EXETER.

1873 and 1874.

EXPENSES connected with the Presentation of the Rev J. J. Dredge, Curate of St. Helen's, Lancashire, to the Vicarage of Buckland Brewer, in the County of Devon.

[Benefice certified by the Ecclesiastical Commissioners to be of the value of £. 200 and not exceeding £. 250.]

| | £. | s. | d. | £. | s. | d. |
|---|---|---|---|---|---|---|
| Payments to the Treasury | | | | — | | |
| Ditto - Home Office | | | | 7 | 13 | 6 |
| Ditto - Attorney General | | | | 8 | 18 | 6 |
| Attending at the Ecclesiastical Commissioners to bespeak certificate of value, and afterwards to obtain the same | | | | — | | |
| Payments at Presentation Office: | | | | | | |
| Stamp duty (*ad valorem*) | 4 | – | – | | | |
| Fees | 9 | – | – | | | |
| | | | | 13 | – | – |
| | | | | 29 | 12 | – |
| Messrs. Day & Hassard's Fee (as London Secretaries for the Diocese of Exeter) for passing Presentation Papers through the said Six Government Offices, making the above Cash Payments, Correspondence, &c. | | | | 2 | 2 | – |
| Cab-hire, Parcels, Postage, and other Incidental Expenses | | | | – | 4 | 6 |
| | | | £. | 31 | 18 | 6 |

DIOCESE

Mr. *Day.*

3rd April 1876.

DIOCESE OF PETERBOROUGH.

1875.

EXPENSES connected with the Presentation of the Rev. James Dodd, M. A., Vicar of St. John-the-Baptist, Islington, to the Vicarage of Newborough, in the County of Northampton.

[Benefice certified by the Ecclesiastical Commissioners to be of the value of £. 250, and not exceeding £. 300.]

| | £. | s. | d. |
|---|---|---|---|
| Payments to the Treasury | — | | |
| Ditto - Home Office | 7 | 13 | 6 |
| Ditto - Attorney General | 8 | 18 | 6 |
| Attending at the Ecclesiastical Commissioners to bespeak certificate of value, and afterwards to obtain the same | — | | |
| Payments at Presentation Office: | | | |
| Stamp duty (*ad valorem*) £. 5 — — | | | |
| Fees 9 — — | | | |
| | 14 | — | — |
| | 30 | 12 | — |
| Messrs. Day & Hassard's Fee (as London Secretaries for the Diocese of Peterborough), for passing Presentation Papers through the said six Government Offices, making the above cash payments, correspondence, &c. | 2 | 2 | — |
| Cab-hire, parcels, postage, and other incidental expenses | — | 4 | 6 |
| TOTAL £. | 32 | 18 | 6 |

In both the above cases the costs of presentation are of course independent of the Fees on "Institution," and "Induction," payable to the Diocesan Officers, under the Order in Council of July 1857.

On presentations to benefices in the gift of the Crown (presented to by the Lord Chancellor) the clergy have only to pay the presentation office fees and the *ad valorem* duty; that is to say, there are no fees payable at the Home Office or to Mr. Attorney General.

The Witness is directed to withdraw.

Ordered, That the Committee be adjourned to Friday, the 5th of May, at Twelve o'clock.

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# APPENDIX.

## Appendix A.

## MARRIAGE LICENSES.



ORDERS of his Grace the Lord Archbishop of *Canterbury*, regulating the Issuing of Marriage Licenses from the Office of his Vicar General, and Correspondence relating thereto.

Order of the Archbishop, dated 30th January 1862.

John Bird, by Divine Providence Archbishop of Canterbury, Primate of all England and Metropolitan, to the Right Worshipful Travers Twiss, Doctor of Laws, our Vicar General in Spirituals, and Official Principal lawfully constituted.

Whereas it hath been represented to us, that the present mode of obtaining licenses for the solemnisation of matrimony, upon affidavits not prepared in the registry of you, our said Vicar General, has been attended with irregularities, and that such affidavits have been frequently prepared without a due investigation of the facts, and in contempt of the law, and that parties have been put to undue expenses for such licenses.

Now we, the Archbishop aforesaid, for the better preventing such irregularities, do hereby order and direct,—

That from and after the 17th day of February 1862, no license for the solemnisation of marriage shall be issued out of the registry of you, our said Vicar General, except upon an affidavit carefully prepared in the said registry, by the registrar or his clerk, from the instructions of one of the parties to be married (personally attending in the registry for that purpose) and duly sworn to by such party, attended by the said registrar or his clerk, before you or your surrogate.

And we further order and direct that our license shall thereupon be delivered to the said party upon payment of the sum of 1 *l.* 10 *s.*, over and above the amount paid for the stamps required by law, which said sum shall include all fees and charges for the said affidavit and license.

Given under our hand at Lambeth Palace, this 30th day of January, in the year of our Lord 1862, and in the 14th year our translation.

(signed) *J. B. Cantuar.*

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On the issuing of the above Order, the following representation was addressed to his Grace the Lord Archbishop by the Proctors practising in his Grace's Arches Court of Canterbury:

Letter to the Archbishop from the Proctors requesting suspension of the above Order.

My Lord Archbishop, Doctors' Commons, 14 February 1862.

The new regulation made by your Grace, and to come into operation on the 17th instant, as to the fees on marriage licenses, has recently been communicated to the Proctors of Doctors' Commons, and they have this day held a meeting thereon, and appointed us, the undersigned, as a committee of their body, to put themselves in communication with your Grace on the subject.

On behalf of the profession we beg, with the greatest respect, to protest against this regulation, and to intimate to your Grace that it will have the effect of entirely depriving the profession of the whole of their accustomed fees and emoluments on the grant of licenses, and that no previous communication thereon has been made to the profession, or any opportunity afforded them of confuting or explaining any complaints or charges which may have been made the grounds for such an alteration.

We beg therefore most respectfully to request of your Grace, from whom the profession

Appendix A.

has always received such kind and courteous consideration, to be good enough to suspend for one month the period for this regulation coming into operation, in order that time may be afforded to the profession for the preparation and presentation to your Grace of such representations on the subject as we venture to hope may lead to the withdrawal or serious modification of that regulation.

We further beg to solicit that your Grace will be pleased to direct that we may be permitted the inspection of any written complaints, charges, or reports laid before your Grace as the grounds for such an alteration, in order that we may furnish your Grace with any explanation or confutation thereof, of which they may be susceptible.

We have, &c.
(signed) *R. W. Jennings.*
*G. R. Longden.*
*H. G. Stokes.*
*W. T. Pritchard.*
*Alfred Heales.*

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LETTER to *F. H. Dyke*, Principal Registrar, enclosing Copy of the foregoing Letter.

Dear Sir, Doctors' Commons, 14th February 1862.

WE beg to enclose a copy of a letter, which, as a committee appointed by the profession for that purpose, we have forwarded to his Grace the Archbishop of Canterbury, on the subject of the new regulation with regard to marriage licenses.

We also beg to inform you that, on behalf of the profession, we protest emphatically against such a regulation as an infringement of their rights and privileges.

We are, &c.
(signed) *R. W. Jennings.*
*G. R. Longden.*
*H. G. Stokes.*
*W. T. Pritchard.*
*Alfred Heales.*

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LETTER from *F. H. Dyke*, Principal Registrar to the Committee of Proctors, communicating the suspension of the Order for the present.

Dear Sir, Doctors' Commons, 15th February 1862.

I BEG to acknowledge the receipt of your favour of yesterday, transmitting a copy of a letter addressed to his Grace the Archbishop of Canterbury, and am directed to state in reply, that the Order is suspended for the present, in order that you may have the opportunity of making such representations to his Grace as you may think desirable.

I am, &c.
R. W. Jennings, Esq. (signed) *F. H. Dyke.*

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AFTER a series of meetings, at which were present the Master of the Faculties (Dr. Lushington), the Vicar General of the Province, and the Chancellor of London (Dr. Twiss), the Principal Registrar of the Faculty Office (Mr. Manners Sutton), and his deputy, the Principal Registrar of the Province of Canterbury (Mr. F. H. Dyke), and the Principal Registrar of the Bishop of London (Mr. John Shephard), together with the Committee of Proctors appointed by the Profession for that purpose, the effect of the Orders of his Grace the Archbishop of Canterbury, and the Lord Bishop of London respectively were fully discussed, and,

On the 2nd April 1862, the following letter was addressed and sent to the Lord Bishop of London (the matter having been referred to his Lordship):

LETTER to the Lord Bishop of London from the Committee of Proctors acquiescing in the Orders of the Archbishop and Bishop of London, and submitting a Scheme for Compensation, to be approved of by the Authorities.

My Lord Bishop, Doctors' Commons, 2 April 1862.

WE beg to thank your Lordship for your kind consideration, in suspending the operation of your recent order as to marriage licenses, so that the proctors practising in Doctors' Commons might have an opportunity for consultation, as to the probable efficacy of any measure on their part, which they might undertake, with a view to procure the extinction of the evils of which complaint has been made to your Lordship.

After careful deliberation, they have arrived at the conclusion that they cannot propose any measure to your Lordship more likely to be completely efficacious in extinguishing the present evils, than the method of procuring marriage licenses contemplated under your Lordship's recent order.

But

But as the effect of that order will be to deprive the proctors of the professional profits accruing to them under the practice which it is proposed to supersede, and as the Legislature has thought it just, when it introduced a new practice in regard to the probate of wills, and the grant of letters of administration, to provide compensation for the loss of profits undergone by them, they beg to submit to your Lordship and his Grace the Lord Archbishop of Canterbury, the justice of establishing a fund for their compensation; and they beg to suggest to your Lordship, that such a fund might be formed by setting apart the sum of 10 *s.* out of the fees to be taken in your Lordship's and his Grace's registries for each marriage license, and that such fund might be appropriated and distributed per capita by the registrars of your Lordship and his Grace, among the proctors now duly certified, according to a scheme to be submitted to and approved of by the Master of the Faculties, his Grace's Vicar General and the Chancellor of the diocese of London.

We are, &c.
(signed) *R. W. Jennings,*
Chairman of the Committee.
*G. R. Longden,*
Hon. Secretary.

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SUPPLEMENTAL ORDER of the Archbishop, appropriating Fees of License to the Vicar General and Principal Registrar.

WHEREAS by an Order under our hand bearing date the 30th day of January 1862, we did order and direct, for the better preventing certain irregularities in the mode of obtaining licenses for the solemnisation of matrimony, upon affidavits not prepared in the registry, that no license for the solemnisation of matrimony should be delivered out of the registry of our Vicar General except upon an affidavit prepared therein by the registrar or his clerk, from the instructions of one of the parties to be married, personally attending in the said registry, and duly sworn to by such party, attended by the said registrar or his clerk, before the Vicar General or his surrogate: and did further order and direct, for the reducing the charges to such party, that such license should be delivered out of the said registry to such party, upon payment of the sum of 1 *l.* 10 *s.* over and above the amount paid for the stamps required by law.

We do by this our supplemental order approve that out of the said sum of 1 *l.* 10 *s.* the sum of 12 *s.* be received by our Vicar General and his successors, and the sum of 18 *s.* by the registrar and his successors.

Given under our hand at Lambeth Palace, this 23rd day of May, in the year of our Lord 1862, and in the 15th year of our translation.

(signed) *J. B. Cantuar.*

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ORDER of Archbishop approving of Scheme of the Master of Faculties and Vicar General for forming a Fund by way of Compensation to existing Proctors.

WHEREAS since the making of our Order of the 30th day of January 1862, it has been represented to us, on behalf of the proctors exercent in our Arches Court, that the profits and emoluments heretofore derived by them from the business of preparing affidavits to lead marriage licenses, will altogether cease upon the said Order coming into operation on the second day of the next ensuing month of June, and that the Legislature has thought it just, when it introduced a new order in regard to the probate of wills and the grant of letters of administrations to provide compensation for the loss of profits undergone by them; and we have been prayed, on behalf of the said proctors, to approve the establishment of a fund for their compensation, according to a scheme to be submitted to and approved of by our Master of Faculties and our Vicar General. And whereas our Master of Faculties and our Vicar General have approved a scheme, whereby the sum of 10 *s.* will be reserved out of the sum of 1 *l.* 10 *s.* received under our said order upon the delivery of each license out of the registry of our Vicar General, to wit, 5 *s.* out of the sum of 12 *s.* to be received by the Vicar General and his successors, and 5 *s.* out of the sum of 18 *s.* to be received by the registrar and his successors, so as to form a fund, which shall be distributed by way of compensation amongst the proctors duly certificated at the date of this order per capita, in such manner that each of the said certificated proctors shall receive one equal share of the total amount of the sums so received for the next ensuing ten years, or for that portion of the said ten years which shall be the term of his natural life, without any benefit of survivorship, and no longer. We do, as far as by law we may, approve the said scheme.

Given under our hand at Lambeth Palace this 23rd day of May, in the year of our Lord 1862, and in the 15th year of our translation.

(signed) *J. B. Cantuar.*

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Appendix A.

LETTER from the Committee of Proctors stating the unanimous Assent of their Body to the above Order and Scheme.

Sir, Doctors' Commons, 26 May 1862.

IN consequence of the interview which took place between yourself and Messrs. Nicholl and Stokes on Friday the 16th instant, the Committee summoned (by circular) a general meeting of proctors for Tuesday the 20th instant, at which meeting the Committee (by way of report) submitted the suggestions made by you at that interview in reference to the plan proposed by you, with the concurrence of the Dean of the Arches, that a sum of 10 *s.* for every license should be appropriated to a fund for distribution amongst the proctors now practising in Doctors' Commons, by way of compensation for the loss to be sustained by them under the new arrangements for the granting of marriage licenses for 10 years.

I have to inform you that such meeting was numerously attended, and that such proposals were unanimously assented to, and the committee were requested to assist the authorities in carrying the same into effect.

I remain, &c.
*G. R. Longden*, Hon. Sec.

To Dr. Twiss,
Vicar General and Chancellor of London.

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THE following Order was made by the Vicar General for regulating the issuing of Marriage Licenses, viz. :

VICAR GENERAL'S OFFICE.—MARRIAGE LICENSES.

BY Order of the Archbishop of Canterbury.

Application for marriage licenses must be made in this registry by one of the parties to be married, and no other application, either verbal or in writing, can be received as instructions for a marriage license.

No agent will be allowed to interfere in any manner whatsoever in obtaining or procuring a marriage license, or paying for the same.

No blank form of affidavit is to be delivered out of this registry.

Affidavits for marriage licenses are to be prepared by the registrar, or his clerk, from the instructions of one of the parties to be married personally appearing in the registry, and such party is to be attended by the registrar, or his clerk, to the Vicar General, or his surrogate, to be sworn.

The license is to be delivered to the party upon payment of the sum of 30 *s.*, over and above the amount paid for stamps.

| | £. | *s.* | *d.* |
|---|---|---|---|
| Fees and charges for the affidavit and license - - - | 1 | 10 | – |
| Stamps - - - - - - - - - - - | – | 12 | 6 |
| | £. 2 | 2 | 6 |

This Order is to come into operation, and be in force, on and after Monday the 2nd day of June 1862.

(signed) *Travers Twiss*, Vicar General.

## Appendix B.

Appendix B.

I.—ESTIMATE of the Total Amount of Fees taken in the Provincial and Diocesan Offices on the Average of the Years 1871, 1872, 1873 (according to the Returns printed in 1875).

| | Marriage Licenses. | General Fees. | Total. |
|---|---|---|---|
| | £. | £. | £. |
| Canterbury (Province and Diocese) | 5,745 | 1,335 | 7,080 |
| York (Province and Diocese) | 1,009 | 836 | 1,845 |
| Bangor | 304 | 369 | 673 |
| Bath and Wells | 295 | 817 | 1,112 |
| Carlisle | 507 | 354 | 861 |
| Chester | 1,555 | 867 | 2,422 |
| Chichester | 301 | 462 | 763 |
| Durham | 400 | 682 | 1,082 |
| Ely | 64 | 637 | 701 |
| Exeter | 665 | 820 | 1,485 |
| Gloucester and Bristol | 647 | 734 | 1,381 |
| Hereford | 161 | 512 | 673 |
| Lichfield | 741 | 416 | 1,157 |
| Lincoln | 439 | 1,032 | 1,471 |
| Llandaff | 412 | 287 | 699 |
| London | 1,333 | 1,456 | 2,789 |
| Manchester | 1,297 | 768 | 2,065 |
| Norwich | 212 | 884 | 1,096 |
| Oxford | 172 | 1,078 | 1,250 |
| Peterborough | 198 | 809 | 1,007 |
| Ripon | 760 | 765 | 1,525 |
| Rochester | 169 | 1,055 | 1,224 |
| St. Asaph | 213 | 423 | 636 |
| St. David's | 500 | 583 | 1,083 |
| Salisbury | 220 | 881 | 1,101 |
| Winchester | 400 | 1,064 | 1,464 |
| Worcester | 536 | 930 | 1,466 |
| Total £. | 19,255 | 20,856 | 40,111 |

II.—ESTIMATE of the Fees taken by the Provincial and Diocesan Officers on the Average of the Years 1871, 1872, 1873 (according to the Returns printed in 1875).

| | £. |
|---|---|
| Vicars General and Chancellors | 7,877 |
| Registrars | 19,637 |
| Secretaries | 11,410 |
| Apparitors | 815 |
| Sealers | 183 |
| Miscellaneous | 189 |
| Total £. | 40,111 |

*N.B.*—To the sum of £. 40,111 there must be added the amount of fees received by—
(1.) Surrogates,
(2.) Archidiaconal Officers,
as to which the Returns do not give complete information.

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CHANCELLORS (CONSISTORIAL COURTS):

1. *Functions Discharged by the Chancellor or Official Principal in each Diocese.*
2. *Appointment and Tenure of Office; Question of Clerical Chancellors.*
3. *Remuneration.*
4. *Suggested Tax upon Chancellors' Incomes as a means of paying the Judge of the Arches.*
5. *Suggested Transfer of Duties, the Office of Chancellor being abolished.*

1. *Functions Discharged by the Chancellor or Official Principal in each Diocese:*

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*CHESTER DIOCESE:*

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2. *As to the extensive Duties performed, satisfactorily, by the Clerical Chancellor of the Diocese, the reduced Fees charged, and the Emoluments of the Office.*
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1. *As to the Visitations of the Archdeacon of Chester, the excellent Attendance of Churchwardens thereat, and the ready payment of Fees by the latter:*

Experience of witness as Archdeacon of Chester in the matter of visitations: total of more than 200 parishes in the archdeaconry, there being seven visitation stations, *Archdeacon Johnson* 1735–1742——Inhibition of witness on two occasions by the bishop from holding visitations, *ib.* 1737, 1738. 1771——Excellent attendance of the churchwardens at witness' visitations, the fee (which is 12 *s.*) being paid marvellously well, *ib.* 1743–1748. 1754–1757. 1853, 1854. 1918, 1919.

Repayment of the churchwarden's fees out of the fund of the parish for church expenses; approval of the offertory being used for the purpose, *Archdeacon Johnson* 1749–1753. 1758, 1759——Circumstance of the clergy not attending witness' visitations, *ib.* 1762, 1763. 1891–1896——Explanation with further reference to the relative jurisdiction of the bishop and witness as regards visitations, &c., *ib.* 1811–1813. 1891–1896——Very good attendance of churchwardens at the visitations in the district which includes Liverpool, Birkenhead, and the country up to Wigan, *ib.* 1909–1919——Ready payment of the churchwarden's fee, which is 12 *s.*, *Espin* 2353. 2356–2358. 2361.

2. *As to the extensive Duties performed, satisfactorily, by the Clerical Chancellor of the Diocese, the reduced Fees charged, and the Emoluments of the Office:*

Large emoluments of the Chancellor of the diocese of Chester, owing to the large population, and the increased number of fees for marriage licenses, &c., *Archdeacon Johnson* 1814–1818. 1827. 1851——Explanation as to the Chancellor of Chester sitting very often in court, and issuing many faculties, this not being the case with other Chancellors, *ib.* 1827–1833. 1847, 1848. 1851——Practice as to the payment of fees by churchwardens to the Chancellor of Chester for advice; facilities in this respect, *ib.* 1850–1853——Belief that the chancellor does not act as legal adviser to the bishop, *ib* 1855–1857.

Appointment generally of clergymen as chancellors of the diocese, *Espin* 2099–2103——Onerous duties discharged by witness as Chancellor of Chester, it being essential that he should reside on the spot, *ib.* 2106–2126——Details relative to the business which comes before witness in the Consistorial Court at Chester, the arrangements under which conducted, and the facilities in the issue of faculties; he holds a court once in three weeks, and sometimes oftener, *ib.* 2109 *et seq.*——Circumstance of witness having never taken

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2. *As to the Extensive Duties performed, satisfactorily,* &c.—continued.

taken legal advice (except from his registrar, who is a solicitor), and having never had an appeal from any of his decisions, *Espin* 2112-2114. 2149-2155. 2167-2170.

Very satisfactory settlement of the cases which come before witness' court, so that it is not necessary to send them to a higher court; tendency to the prevention of litigation by the facilities given, *Espin* 2112-2118. 2144-2148. 2160, 2161——Particulars more especially as to the faculties issued by witness, and the different circumstances under which granted; maximum charge of 2 *l.* 12 *s.*, including 10 *s.* for the stamp, whilst in some cases the fee is excused altogether, *ib.* 2122-2159——Further statement as to its being essential that witness should be resident, on account of the numerous cases which come before him, most of which never come into court and are disposed of quietly, *ib.* 2198-2200. 2211-2214——Explanation in regard to witness never authorising any fees privately, public notice being always given to the incumbents and churchwardens, *ib.* 2200-2202.

Power and practice of witness as to the regulation or approval of fees of different kinds in new parishes; peculiarity of the diocese of Chester in this respect, *Espin* 2200-2210. 2249, 2250——Statement as to witness and the registrar at Chester having frequently given legal advice to the bishop, so that paid professional advice has not been necessary; reference hereon to the complicated questions which often arise in connection with pew rents, &c. in the new parishes, *ib.* 2246-2251——Duties of witness as incumbent of Wallasey, these not being interfered with by the office of chancellor, *ib.* 2252-2259—— He is also rural dean, and is chaplain to the bishop, but would rather the former office were held by some one else, *ib.* 2260-2265.

Statement as to the Chancellor of Chester performing all the legal and judicial duties of the archdeacons, and as to the latter exercising no jurisdiction save for the admission of churchwardens at visitations, *Espin* 2299-2313 ——Reduction already effected in the fees generally in the diocese, *ib.* 2347. 2353. 2356-2361——Reduced ordination fees charged in many cases, *ib.* 2352, 2353——Reduction made by witness in the sequestration fee, nothing being charged when the living is under 150 *l.*; *ib.* 2359, 2360. 2374—— Reduced fees also charged on institution, *ib.* 2375, 2376.

Table of fees for faculties, &c., as authorised by witness; also table of fees for new parishes, *Espin* 2380.

3. *Union of the Offices of Registrar and Bishop's Secretary:*

Probable sufficiency of the fees in Chester Diocese for remuneration of the bishop's secretary, the secretary, however, being also registrar, *Espin* 2292-2298.

4. *Public Registry Office for the Diocese:*

Permanent registry office at Chester, this not belonging to the present registrar, *Archdeacon Johnson* 1797-1807——Public character of the registry at Chester, no rent being paid for it, *Espin* 2318-2322.

5. *Income of the Archdeaconry of Chester:*

Endowment of the archdeaconry partly from fees, the Ecclesiastical Commissioners making up the annual amount to 200 *l.* a year, *Archdeacon Johnson* 1769-1771.

6. *Procurations and Synodals:*

Considerable number of parishes in the diocese to which the old rules as to procurations and synodals do not apply, *Archdeacon Johnson* 1819-1826——Information relative to the amount of procurations and synodals received from the parishes, these fees being fixed by custom and being paid without difficulty, *Espin* 2348-2350. 2362373.

7. *Prejudicial Effect upon the Diocese if the Bill be passed in its present shape:*

Considerable loss by the archdeaconry if the churchwardens' fees were reduced to 5 *s.*, as proposed by the Bill, *Archdeacon Johnson* 1930, 1931——Very prejudicial effect of the Bill, in its present shape, upon the diocese of Chester; expected raising of the fees generally, *Espin* 2351. 2380——Estimate of some 1,600 *l.* or 1,700 *l.* as the amount to be taken from the diocese of Chester by the Bill in its present shape, *ib.* 2380.

8. *Representation by the Diocesan Officials to the Archbishops of Canterbury and York:*

Memorial of ecclesiastical officials to the Archbishops of Canterbury and York in July 1875, upon the subject of ecclesiastical fees, *Espin* 2380.

*Chichester Diocese.* Witness is secretary to the Bishop of Chichester, and is deputy registrar to the bishop for the archdeaconry of Chichester, the diocesan registry being divided, and therebeing a separate registry at Lewes; he is also the archdeacon's registrar,

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*Raper* 1933–1943——The offices of secretary and deputy registrar are held during pleasure, and have been so held by successive members of witness' firm for seventy years; statement hereon as to the registrarship having been formerly held by Lord Romilly, and being now held by Mr. Durnford, a son of the bishop, *ib.* 1944–1953. 1971–1977——Security for witness' tenure of office as deputy registrar through the registrar being non-resident; obstacle to the latter performing the duties, as he is not a notary, *ib.* 1978–1983.

Paper submitted explanatory of the duties and remuneration of the several offices filled by witness, and of the ecclesiastical offices generally in the diocese of Chichester, together with suggestions in detail on the score of tenure of office fees, collection by stamps, &c., *Raper, Ev. p.* 171–177——Duties and remuneration of the offices of chancellor, vicar-general, and official principal, these offices being held by Mr. Wintle, son of the last bishop, *ib.* 172.

Sufficient remuneration of witness by a payment of 400 *l.* a year, his emoluments as secretary and deputy registrar not coming up to that amount, *Raper* 2066–2070—— Customary payment of 15 *l.* a year to the registrar of the archdeaconry of Chichester, out of which he has to pay 4 *l.* a year for land tax; this is the entire emolument of the sinecure, *ib.* 2071–2081——Statement as to there having been only three contentious cases in the chancellor's court in the diocese during the last twenty-five years; small remuneration of the office of chancellor, *ib.* 2081–2091. 2095.

*Church Discipline Act.* Exceedingly few cases which come before the Consistorial Court in the diocese of Gloucester and Bristol, under the Church Discipline Act, *Monk* 6–12. 96, 97—— Experience of witness as commissioner in some cases under the Church Discipline Act, these cases not coming before the Consistorial Court; cumbrous and expensive machinery of the Act for trying these cases, it being far better that they should go before the Consistorial Court, *Espin* 2154, 2155. 2171–2197. 2215–2226——Diminution of the chancellor's work by the Church Discipline Act of 1840; single instance of witness having sat under the Act, *Brunel* 3314–3322.

*CHURCHWARDENS:*

1. *As to the Fee on Admission of Churchwardens, the difficulty as to Repayment, and the Effect as regards their Attendance at the Archdeacons' Visitations.*
2. *As to the Modes of Admission, and the Expediency of encouraging Admission at Visitations.*
3. *As to the Question of Reduction or Abolition of Churchwardens' Fees.*

1. *As to the Fee on Admission of Churchwardens, the difficulty as to Re-payment, and the Effect as regards their Attendance at the Archdeacons' Visitations:*

Impression as to the churchwardens' fees not varying in the different dioceses, *Monk* 57–59—— Natural objection by churchwardens to the payment of fees, as they have, in many cases, no means of recouping themselves, *ib.* 60–62. 77——Out of forty-two parishes in a certain deanery the churchwardens of only six paid the fee, *ib.* 77–79—— Difficulty in numerous instances of enforcing the payment of fees by churchwardens on admission; circumstances under which the church-rate or offertory would be liable for the amount, *ib.* 102–117. 134——Belief that payment of the fee could be enforced out of a voluntary church-rate, *ib.* 197–199.

Regulation by Order in Council of the present fee, which is 18 *s.*, *Archdeacon Pott* 391—— Absence of any provision in many parishes for payment of the fee, whilst the courts have held that the churchwarden is not personally liable, *ib.* 391–393——Increasing absence of churchwardens from visitations on account of the fee difficulty, *ib.* 393.

Very small payment of fees by churchwardens when admitted at visitations, there being no fund for the purpose since the abolition of church-rates, *Deane* 748–752—— Reduction of the fees at the archdeacon's visitation in St. Alban's from 29 *l.* to 3 *l.*, *ib.* 751. 933—— Opinion that where money is collected expressly for the sustentation of the fabric it should be liable for the visitation fee; strong objection to offertory money being used for the purpose, *ib.* 753–786. 846–848—— Numerous parishes in which no church rates are levied nor collections made for sustentation of the fabric, so that the churchwardens have no fund out of which to pay the fee, *ib.* 778–780.

Refusal by churchwardens to pay the visitation fee in the absence of any fund for the purpose, whilst there is no power to compel payment, *Deane* 821–828——Opinion that the present statutory fee of 18 *s.* cannot be legally reduced by individual archdeacons, *ib.* 853, 854——Practice of churchwardens to attend the visitations, though they refuse to pay the fees in the absence of a fund on which to charge them, *ib.* 929–933—— Approval of the principle of the parishes being liable for these fees, *ib.* 934–936.

Uniform fee of 16 *s.* paid by churchwardens in the diocese of Oxford, *Davenport* 1098, 1099—— Very scanty attendance of churchwardens at the visitations of witness as Archdeacon

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*CHURCHWARDENS*—continued.

1. *As to the Fee on Admission of Churchwardens, &c.*—continued.

Archdeacon of Durham, though these are held at four different centres, *Archdeacon Prest* 1112——Effect of the fees and the cost of travelling in preventing the attendance of churchwardens; the amount of the former is 18 *s.*, and in the great majority of cases is not paid at all, *ib.* 1112–1117. 1149–1152——Out of 156 parishes, ninety-three omitted to appear by their churchwardens, though witness' visitation was held at four different centres, *ib.* 1112.

Legal fee of 18 *s.* now payable at visitations, *Dean of Lichfield* 1322–1324. 1329——Grounds for the conclusion that the churchwardens may with propriety be repaid the visitation fees, not only out of funds for the sustenation of the fabric, but out of offertory collections, *ib.* 1331–1338. 1372–1378. 1394–1401——Inexpediency of charging the churchwarden's fee upon the interest of so small a sum as 100 *l.* set aside for repairs, *ib.* 1385–1393.

Instances of churchwardens objecting to pay fees, and not attending the visitations in consequence of the fees, *Lord A. Compton* 1671–1675——The question of payment depends very much on the personal popularity of the archdeacon, *ib.* 1672——Greater willingness to pay accordingly as the registrar is popular, *Jeffreys* 1693——Approval of these fees being repaid out of the church funds, where there are any available, *ib.* 1701–1708——Willingness of the churchwardens to pay their fees, if encouraged to do so by the clergy, *Gates* 2907, 2908——Objection to the offertory being used as a means of recouping the visitation fee, *Brunel* 3710–3716.

2. *As to the Modes of Admission, and the Expediency of encouraging Admission at Visitations:*

Necessity of churchwardens being admitted at visitations; loose practice as to their being re-admitted yearly, and as to the payment of fees, *Monk* 45–56. 77–79. 142–145——Expediency of churchwardens being admitted at other times as well as at visitations, no fee being paid; amended clause proposed to this effect, *ib.* 70–75——Explanation that in proposing that churchwardens may be admitted privately by incumbents, as well as at visitations, witness contemplates that in neither case should fees be demanded, *ib.* 118–132.

Further statement that churchwardens cannot be legally admitted, save at a visitation, *Monk* 193, 194——Opinion that the ordinary has no right to refuse to admit a churchwarden because of non-payment of the fee, *ib.* 195, 196——Evidence as to the beneficial effect of the archdeacon's visitations, and as to the importance of facilitating the admission of the churchwardens thereat, instead of admitting them in vestry, *Archdeacon Pott* 395. 430–432.

Doubt as to the vestries being willing to pay the fee, if the churchwardens were admitted at the vestry instead of at the visitation, *Deane* 829. 832——Facility of admitting churchwardens, otherwise than at visitations; importance, however, on several grounds, of maintaining and encouraging the practice of admission at visitations, *ib.* 833–845——Inexpediency of legally admitting churchwardens at a vestry of the parish, *Davenport* 1094. 1100——Apprehension lest the Bill may encourage the admission of churchwardens at vestries, instead of at visitations, *Boyd* 1181–1188.

Admission by the surrogates of some of those churchwardens who do not attend witness' visitations, many not being formally admitted at all, *Archdeacon Prest* 1121. 1149——Opinion that the proposal to admit churchwardens by the vestries would gradually extinguish the archdeacons' visitations, *Dean of Lichfield* 1316–1321——Great importance attached to the office of churchwarden, and to the periodical meeting of clergy and churchwardens at the archdeacons' visitations, *ib.* 1335, 1336. 1346–1349——Almost invariable nomination of churchwardens in vestry in the Easter week, *ib.* 1372, 1373——Approval of the proposal as to churchwardens producing a stamped certificate before admission at visitations, *ib.* 1542, 1543.

Importance attached to the presence of churchwardens at the visitations, *Jeffreys* 1729–1734; *Archdeacon Johnson* 1917——Practice of witness not to admit churchwardens without the signatures of the outgoing wardens and of the clergyman to the document presented on the occasion; expediency of this requirement generally, *Archdeacon Johnson* 1921–1924——Objection to the course proposed by the Bill as regards the stamped declaration upon which churchwardens are admitted; approval rather of the plan in witness' archdeaconry whereby the new churchwardens sign the form of declaration in the presence of the old churchwardens at the visitations, *ib.* 1925–1929.

Suggestion that clear provision be made for the admission of churchwardens by the ordinary, *Espin* 2377–2379——Explanation that the incumbent's churchwarden may be appointed otherwise than at a vestry, *Stevens* 2766——Suggested amendment of Clause 42 in order that it may not militate against the re-election of outgoing churchwardens, *Gibbs* 3075–3080.]

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*CHURCHWARDENS*—continued.

1. *As to the Modes of Admission, and the Expediency, &c.*—continued.

Explanation as regards the churchwardens' fee, that it is proposed to make the payment of the fee antecedent to admission; question hereon as to the power of making a legal presentment, the fee not being paid, *Brunel* 3698-3704.

3. *As to the Question of Reduction or Abolition of Churchwardens' Fees:*

Opinion that the fees on the attendance of churchwardens should be remitted altogether, and that the registrars should be paid from other sources, *Monk* 63–77. 145–148——Disapproval of the proposal for a compulsory payment of 5 *s.* by a churchwarden on appointment; belief that the amount required for salaries may be provided without this charge, *ib.* 203–207.

Strong objection by the archdeacons to the payment of any fee by the churchwardens at visitations; importance of the fee being wholly abolished rather than of a reduced fee of 5 *s.* being levied, as proposed by the Bill, *Archdeacon Pott* 390–398——Failure of the plan adopted in the Diocese of Winchester whereby the fee was reduced to 5 *s.*, *ib.* 393——Probable loss of not more than 2,000 *l.* a year to the fee fund if the churchwarden's fee were wholly suppressed; gradual diminution now going on, *ib.* 393. 464-470——Expediency of abolishing this fee in preference to any other, *ib.* 394–398——Probability of as much difficulty in obtaining a reduced fee of 5 *s.* as the present fee of 18 *s.*, *Deane* 788.

Approval of the proposed admission of churchwardens upon a 5 *s.* stamp; this would lead in witness' archdeaconry to a large increase in the number of legal admissions, *Archdeacon Prest* 1149–1152——Improvement by the proposed reduction of the fee to 5 *s.*, *Boyd* 1174, 1175——Great importance attached to the attendance of churchwardens at witness' visitations in Lincoln; difficulty as to the payment of fees, so that it is desirable to remit them altogether, *Archdeacon Kaye* 1256–1263.

Suggestion that the fee stamp be 7 *s.* 6 *d.* instead of 5 *s.* (as proposed by the Bill), and that 2 *s.* 6 *d.* be returned to the churchwarden for his expenses in attending the visitation, the remaining 5 *s.* going to the registrar, *Dean of Lichfield* 1340–1346. 1358–1371——Explanation that in parishes where there are two churchwardens witness proposes that each should have a stamp of 7 *s.* 6 *d.*; this would not be deemed at all oppressive, *ib.* 1358–1371——Objection to the abolition of churchwardens' fees as likely to interfere with the efficiency of the visitations, *ib.* 1402——Probable continuance of complaint on the part of some churchwardens though the visitations may be reduced from 18 *s.* to 5 *s.*, *ib.* 1540, 1541.

Great dislike of churchwardens to the visitation fees, as shown in the archdeaconry of Maidstone; decided advantage if they were abolished altogether, *Jeffreys* 1689–1710——Belief that many churchwardens would equally refuse to pay a fee of 5 *s.* as of 10 *s.*, the latter being the fee in the archdeaconry of Maidstone, *ib.* 1689–1694. 1697——Objection to the proposal in the Bill whereby the appointment of churchwarden is made to depend upon the payment of the fee, *ib.* 1699, 1700.

Decided objection to a reduction of the churchwardens' fee to 5 *s.*, *Espin* 2358——Impression that if churchwardens' fees were abolished, the total fees (estimated at 45,000 *l.*) would be reduced by about 6,000 *l.*, *Brunel* 3501–3506. 3509, 3510——Approval on the whole of an abolition of the churchwardens' fees at visitations, *ib.* 3705–3769.

*See* also *Buckingham Archdeaconry.* *Chester Diocese*, 1. *Lindisfarne Archdeaconry.*

*CLERGY:*

Relative ground for dissatisfaction as regards payment of fees by clergymen and by churchwardens, respectively, *Monk* 80–86. 133–137——Explanation that the ecclesiastical fees paid by the clergy are only those on ordination, on license, and on institution; these do not press heavily on the clergy, *Lee* 544, 545——Modification suggested as regards the fees in respect of benefices, &c.; the clerical fees however not being oppressive, *Dunning* 621, 622.

Evidence to the effect that the fees paid by the clergy are light as compared with those paid in the legal profession; reference hereon to the Orders in Council of 1857 and 1869, *Deane* 789–817. 849–851. 937, 938——Approval however of a reduction of the fees paid by the clergy out of their own pockets, rather than of an abolition of the churchwardens' fees paid by the parishes, *ib.* 789. 797-799. 818–820. 852——Oppressive effect in some cases of the fees paid by the parochial clergy, so that they should if possible be remitted, *Boyd* 1176–1180——Evidence to the effect that the fees payable by the parochial clergy are light in amount and do not involve hardship, *Archdeacon Kaye* 1264–1278.

Expediency of reducing the fees paid by the clergy rather than those paid by the churchwardens, *Dean of Lichfield* 1403. 1409——Statement submitted showing

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showing the fees paid under the old stamp law on presentation and institution, and the reduced scale since 1864, *Dean of Lichfield's Ev., p.* 135—— Paper containing suggestions for the amendment of the scale of ecclesiastical fees on institution or license to a benefice, *ib. p.* 136.

Considerable feeling among the clergy in regard to the fees for which they are liable on institution, as well as the procurations and synodals, *Lord A. Compton*, 1583–1589 ——Evidence in detail in support of the conclusion that the fees generally press very heavily upon small livings, though the actual ecclesiastical fees paid by witness on getting into his living may not have been very large, *Nowers* 2383 *et seq.* 2554–2556. 2562–2569.

Complaint on the part of the clergy generally as to the heavy incidence of the fees for presentation, institution and induction, the total amounting to 17 *l.* 16 *s.* 6 *d.*, *Stevens* 2696–2703——Doubt as to the making of rules and orders by the proposed central body giving satisfaction to the clergy throughout the country; improvement if the clergy were represented by proctors in convocation, *ib.* 2761–2766.

Belief that the clergy in the diocese of Peterborough do not as a rule complain of the fees which they are required to pay; nor are the fees at all excessive, *Yates* 2916–2922 —— Dissatisfaction of the clergy in some cases through their not distinguishing between the ecclesiastical fees and the fees or taxes upon induction and institution, *ib.* 2917–2922.

Evidence as to the expediency of dealing with the fees of the clergy for marriages, and of regulating them by means of rules and orders; advantage if the clergy were to marry without a fee, being relieved at the same time from the induction fee, *Gibbs* 3085, 3086. 3088, 3089——Reference to the fees on institution to livings and certain other fees as pressing heavily upon the clergy, *Currey* 3189–3195.

Suggestion by a clergyman in the Ely diocese for taxing all holders of benefices, fees being entirely dispensed with, *Brunel* 3459–3461——Necessary lapse of very many years before the clergy can obtain the full benefit of the remissions proposed by the Bill, *ib.* 3528–3634.

*See* also *Dilapidations Act. Faculties. Institution Fees. Marriage Licenses. Procurations and Synodals. Yelling.*

*Cobb, Mr.* Letter from Mr. Cobb, Actuary of the Convocation of Canterbury, in support of a payment of 1,000 *l.* a year out of the fee fund towards the expenses of both convocations, *Dean of Lichfield*, 1566.

*Commissaries.* Approval of a union of the office of vicar general with that of commissary of the diocese of Canterbury, *Dyke* 237–241 ——Several commissaries in the diocese of Ely who claim to issue licenses, so that not many are issued by witness, or rather by the registrar, *Brunel* 3258–3261. 3269–3272.

Resolution of the Committee that the duties now performed by the commissary general of the city and diocese of Canterbury shall be performed by the vicar general, *Rep.* x. ——Also that the office of commissary be abolished, *ib.*

*Compensation.* Several charges to be created by the Bill which would diminish the security for the compensation to holders of offices, *Lee* 561–564.

*See* also *Archdeacons. Deputy Registrars. Faculty Office. Marriage Licenses. Registrars.*

*Compton, The Venerable Lord Alwyne.* (Analysis of his Evidence.)—Is Archdeacon of Oakham, 1571——Performance of the duties of registrar of this archdeaconry by Mr. Gates, who is also registrar of the archdeaconry of Northampton, 1572–1574——Offices of registrar of the diocese and secretary of the bishop also filled by Mr. Gates, without any inconvenience arising, 1575–1582.

Considerable feeling among the clergy in regard to the fees for which they are liable on institution, as well as the procurations and synodals, 1583–1589——Heavy amount of the procurations and synodals in some cases, 1585, 1586—— Dissatisfaction in regard to the fees under the Dilapidations Act; power of the archdeacons and rural deans to remedy this, 1590–1595.

Evidence in support of a recommendation by a committee of the Convocation of Canterbury that all archidiaconal courts should be abolished, visitations being retained, 1596–1610. 1615, 1616——Sufficiency of one court, that of the bishop, for all contentious jurisdiction in the diocese, 1606. 1610——Approval of the proposed union of the offices of registrar and bishop's secretary, 1611, 1612. 1678–1680——Recommended appointment of one apparitor for each diocese; he should act at times as clerk to the registrar, 1613, 1614. 1627.

Suggestion that certain offices now held by officers of the archdeaconry be vested in the diocesan officers, 1614–1618——Opinion that the registrar and secretary, when united, should hold office during good behaviour, and only be removed for cause assigned, 1620–1626——Expediency of the registrar attending at each archdeacon's visitation, 1628–1631——Approval of payment by salary instead of by fees, 1632.

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*Compton, The Venerable Lord Alwyne.* (Analysis of his Evidence)—*continued.*

Opinion that the fee fund should be diocesan, each diocese having its own system of fees, 1633-1635——Suggestion that the diocesan fee funds might be taxed for the payment of provincial officers and of the judge of the Arches, 1636, 1637——Objection by many of the clergy to the payment of the judge of the Arches from the common fund, 1638–1640——Grounds for the conclusion that it is not expedient to provide that the chancellors must be barristers of so many years' standing, 1641–1647. 1676, 1677——Means by which the appointment of incompetent chancellors may be securely guarded against, 1647, 1648——Reasons for objecting to the chancellors being taxed as a means of paying the judge of the Arches, 1649–1651.

Less difficulty in enforcing payment of procurations than of churchwardens' fees, 1652–1655——Advantage of the churchwardens being represented in the management of a diocesan fee fund, 1656——Objection to the procurations and synodals payable to archdeacons being abolished, though it would be well to exempt livings below a certain value, 1657–1659.

Reasons for preferring that the fees should be regulated in each diocese by a diocesan body, instead of being fixed by a single body for the whole of England, 1660, 1661——Considerations as to the constitution of the body for managing the fee fund, and as to the means of representation of the clergy, 1662–1670——Instances of churchwardens objecting to pay fees, and not attending the visitations in consequence of the fees, 1671–1675.

*Consecration of Churches.* Explanation relative to the fees and expenses on the consecration of churches, *Lee* 579–584——Duties performed by the vicar general with regard to the consecration of churches, *Brunel* 3275.

Suggestions for simplifying the forms and reducing the expense in connection with the consecration of churches; the Act of Consecration might be omitted altogether, and one examination of the conveyance or title, either by the Ecclesiastical Commissioners or by the chancellor of the diocese, should be sufficient, *Brunel* 3275–3305.

*Consecration of Churchyards.* Facility in Chichester diocese with respect to the payment of a fee of 5 *s.* for the consecration of an additional churchyard, no other fee being charged; doubt as to the practice in other dioceses with respect to the fee charged, *Raper* 2036–2049.

*Consistorial Courts.* See *Chancellors.* *Chester Diocese*, 2.

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*First Fruits and Tenths.* Hardship in the case of the Archdeaconry of Lincoln on the score of the large payment to Queen Anne's Bounty in the shape of tenths and first-fruits, *Archdeacon Kaye* 1310-1312——Opinion that livings of small value should be excused first-fruits and tenths altogether, *Nowers* 2498, 2499.

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*Gloucester and Bristol Diocese* (*Office of Registrar*). Explanation relative to the duties of the office of registrar, there being two registrars and two distinct registries in the diocese of Gloucester and Bristol, *Monk* 30–37——Contemplated continuance of two separate registries and registrars for Gloucester and Bristol; inadequacy of one salary between the two registrars, *ib.* 98–100.

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*Hamilton, The Venerable Archdeacon George Hans.*—(Analysis of his Evidence.) Is Archdeacon of Lindisfarne, Archdeacon Bland being the Archdeacon for Northumberland, 2570–2574——Complaint as to the churchwardens' fees in Lindisfarne Archdeaconry having been raised from 15*s.* to 18*s.* under the powers in the Act 30 & 31 Vict. c. 135; reduction at the same time from 6*s.* 6*d.* to 2*s.* in the archdeacon's proportion, 2575–2578——Great difficulty in collecting the fees since their increase, 2576, 2577.

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*Institution Fees.* Degree of pressure upon the clergy in respect of the Government stamps on institution; reduced scale in force since 1864, *Deane* 895–902——Uniform fee of 7*l.* 17*s.* 6*d.* since 1857 upon institution, *Stevens* 2701, 2702——Proposed combination of the work of institution and induction, *Gibbs* 3089–3092——Opinion that the fees on institution should be according to the value of the preferment; witness, however, has never heard of any really vexatious cases of institution fees, *Brunel* 3323–3325.

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*Jeffreys, The Rev. Henry A.* (Analysis of his Evidence.)—Opportunities of witness as proctor in convocation, and as rural dean, for becoming conversant with the feelings of the clergy in the diocese of Canterbury, 1682–1684——Good ground for the objections by the clergy to the fees under the Dilapidations Act; advantage if the surveyors' fees under the Act could be dealt with by the present Bill, 1685–1688. 1711, 1712——Failure of efforts by witness to procure the appointment of local surveyors, whose charges should be much less than those of the first class men now employed, 1686. 1711.

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M.

*MARRIAGE LICENSES:*

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2. *Revised System of issue in London in* 1862; *Arrangements for Compensation to the Proctors in consequence.*
3. *Number of Licenses and Amount of Fees in London and throughout the Country.*
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6. *Relief to the Clergy and Laity respectively, by a reduction of the Fees.*
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Very heavy charge upon witness for first-fruits and tenths to Queen Anne's Bounty; unfairness in his having to pay tenths for the whole year, instead of the outgoing incumbent or his family paying a fair proportion, 2487–2497——Opinion that livings of such small value as Yelling should be excused first-fruits and tenths altogether, 2498, 2499 ——Demand made twice a year for a sum of 7 *s.* 8 *d.* as tenths due to the Bishop of Ely, 2500–2502——Payment of 10 *l.* 7 *s.* 6 *d.* a year by witness for land-tax, 2503–2506.

Complaint as to witness having been charged under the Dilapidations Act 6 *l.* 7 *s.* for the surveyor, 3 *l.* 12 *s.* for the bishop's secretary, and 15 *s.* 4 *d.* for the registrar; grievance more especially in respect of the secretary's fee, 2507–2524. 2528–2533. 2540. 2555, 2556——Very heavy charge upon witness for poor rates, 2525, 2526——Large payment also in respect of a loan from Queen Anne's Bounty for the parsonage house, 2527, 2528——Excellent state of repair in which witness left his house in his late living, whereas he has been called upon to pay 10 *l.* 14 *s.* 4 *d.* for fees in respect of the dilapidations in his present living; the whole charge in respect of dilapidations should in fact be borne by the outgoing incumbent, 2528–2533.

Aggregate of about 172 *l.* received by witness for tithes, &c., in the first half-year, his payments under various heads leaving only 57 *l.* out of this amount, 2534–2542—— Collection of the tithes at the expiration of every six months, there being no arrear due to witness not paid within the first six months, 2543–2553——Conclusion that the fees generally press very heavily upon small livings, though the actual ecclesiastical fees paid by witness on getting into his livings may not have been very large, 2554–2556. 2562–2569——Difficulty as to the payment of churchwardens' fees and of church rates in Yelling parish, 2557–2562.

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*Official Principal of the Bishop.* See *Chancellors.*

P.

*Pentecostals.* Origin of pentecostals, this fee being still payable to the dean and chapter *Archdeacon Kaye,* 1241, 1242.

*Peterborough Diocese.* Greatly reduced cost of faculties in Peterborough diocese since there has been a clerical chancellor, *Stevens* 2743–2745.

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*Peterborough Diocese*—continued.

Office and other expenses paid by witness in connection with the diocesan registry, *Gates* 2923–2927——Reference to a Return showing the fees received in the diocese of Peterborough in 1874, *ib.* 2924, 2925. 2999–3001——Explanation as to a registry for the bishop's business not being required at Northampton, *ib.* 2928, 2929.

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*Philips, Mr.* Letter from Mr. Philips, synodal secretary of the Convocation of York, submitting that a payment should be made to Convocation out of the Fee Fund; reference more especially to the attendance of the diocesan registrar at the meetings of Convocation, *Dean of Lichfield* 1566–1570.

*Pott, The Venerable Archdeacon Alfred.* (Analysis of his Evidence.)—Representations by witness of the views of numerous archdeacons, who have had several meetings on the subject of the present Bill, 380–383——Great desire on the part of the archdeacons that nothing should be done by the Bill to interfere with their visitation courts, or to discourage the presence of the churchwardens thereat; doubt, however, of witness as to the Bill having this effect, 384–390——Limited weight attached by witness to the objection by some archdeacons to being deprived of the power of appointing surrogates and of issuing faculties, 386–289.

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*Presentation of Fees.* Reference to a letter from Messrs. Day & Hassard relative to the fees on presentation to Crown livings; large amount in the case of Mr. Dodd's appointment to the living of Newborough, *Gates* 2955-2960——Long interval before some Crown livings are filled up so that the presentee has the more arrears to receive, *ib.* 2960.

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*Prest, The Venerable Archdeacon.* (Analysis of his Evidence.)—Very scanty attendance of churchwardens at the visitations of witness as archdeacon of Durham, though these are held at four different centres, 1112——Effect of the fees and the cost of travelling in preventing the attendance of churchwardens; the amount of the former is 18 *s.*, and in the great majority of cases is not paid at all, 1112–1117. 1149–1152.

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*Pringle, George.* (Analysis of his Evidence.)—Is secretary to the Ecclesiastical Commissioners; has considered the clauses in the Bill which affect the Commission, 2776–2779——Objection to Clause 23 as imposing upon the Commissioners certain duties in respect of stamps, which is entirely a new class of business for them to undertake, and falls more properly within the province of the Inland Revenue Department, 2780–2784. 2790–2792——Objection also to the provision in Clause 30 as to the Commissioners appointing an auditor of the accounts of receipts and disbursements of the registrars appointed to sell stamps, 2785–2789.

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Estimated charge of about 4,000 *l.* a year upon the common fund of the Commissioners if required to compensate archdeacons for procurations and synodals, 2800, 2801. 2804–2807. 2819, 2820——Estimate of from 700 *l.* to 800 *l.* a year as the amount which the Commissioners could enforce in respect of bishops' procurations and synodals, 2802, 2803. 2808–2818——Varying average of these fees in different dioceses, 2821——Concurrence in the view that the income of an archdeacon should not be reduced below 200 *l.* a year by the payment of fees; dissatisfaction among archdeacons on the subject, 2827–2833.

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*Proctors.* Deficiency in Sub-section 50 of Clause 40, in not stating who is to pay the fees or expense of the election of a proctor to Convocation, *Archdeacon Hamilton* 2689–2692

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*Proctors*—continued.

——Election of proctors for Convocation in London without any expense falling upon them, *Gibbs* 3094-3099——Provision suggested as to the candidates at the election of proctors paying the expense, *Brunel* 3694-3697.

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*PROCURATIONS AND SYNODALS:*

1. *As payable to Archdeacons.*
2. *As payable to Bishops.*

1. *As payable to Archdeacons:*

Approval of the proposal by the Bill for the abolition of procuration fees paid by the clergy on visitations; way in which these fees are regulated, *Monk* 202-208-213.

Resolution passed by the archdeacons adverse to the abolition of procurations and synodals, and in favour of their collection by Queen Anne's Bounty Board, *Archdeacon Pott* 399-401——Belief that there is no real distinction between procurations and synodals; doubt as to their amount throughout the kingdom, *ib.* 402-404. 474-477——In witness' archdeaconry, comprising more than 200 parishes, the procurations come to about 50 *l.* a year, *ib.* 403——Representation on the part of the larger archdeaconries as to the Bill not providing any compensation in their case for the loss of the procurations, *ib.* 407-409.

Payment of procurations upon vicarages as well as rectories; most of these are 500 years old, and bear no relation to the present income of the livings, *Archdeacon Pott* 471-477——Advantage of abolishing procurations altogether, rather than of trying to amend the present irregularities of amount, *ib.* 475, 476——Varying amounts of the procurations and synodals received by the archdeacons in the diocese of Oxford; these are always paid by the clergy, *Davenport* 1083-1088.

Circumstances under which witness gave up procurations and synodals six years ago, *Archdeacon Prest* 1142-1144——The clergy objected very much to these fines, *ib.* 1142.

Serious charge entailed upon the common fund of the Ecclesiastical Commissioners if procurations and synodals were abolished, *Archdeacon Kaye* 1231. 1243——Explanation of the origin of procuration fees, and of the expenses for which they are an ancient composition, *ib.* 1232. 1236——Payment of procuration fees by rectors, lay and clerical, and by vicars, where they receive small tithes; the amount varies from 6 *s.* to 10 *s.*, 1233-1235. 1248.

Origin and ancient character of synodals, these fees being payable by rectors and vicars, and averaging about 2 *s.* 6 *d.* in each case, *Archdeacon Kaye* 1237-1240. 1311——Calculation that the charge, by way of compensation to archdeacons for loss of procurations and synodals, would amount to between 4,000 *l.* and 5,000 *l.* a year, *ib.* 1243——Difficulty in pressing for payment of all the procurations and synodals to which witness is entitled, so that he receives only about half, *ib.* 1244——Belief that procurations and synodals are recoverable in the courts of law, *ib.* 1279, 1280——Suggestion that procurations and synodals be retained, and be collected with the tenths paid to Queen Anne's bounty, *ib.* 1306-1309.

Ancient date from which procurations and synodals have been levied, it being desirable to modify and regulate these payments rather than to abolish them, *Dean of Lichfield* 1404-1408——There should be a graduated scale, and all livings below a certain value should be exempted, *ib.* 1407——Suggested exemptions of all livings under 200 *l.* a year, *ib.* 1539. 1551-1553.

Heavy amount of the procurations and synodals in some cases, *Lord A. Compton* 1585, 1586——Less difficulty in enforcing payment of procurations than of churchwardens' fees, *ib.* 1652-1655——Objection to the procurations and synodals payable to archdeacons being abolished, though it would be well to exempt livings below a certain value, *ib.* 1657-1659.

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Estimated charge of about 4,000 *l.* a year upon the common fund of the Ecclesiastical Commissioners, if required to compensate archdeacons for procurations and synodals, *Pringle* 2800, 2801. 2804-2807. 2819, 2820.

Boon to the clergy by abolishing the payment of procurations; greatly increased rates paid by them within the last forty years, *Gibbs* 3060-3062.

2. *As*

Report, 1876—*continued.*

*PROCURATIONS AND SYNODALS*—continued.

2. *As payable to Bishops:*

Considerable difficulty experienced in the collection of the episcopal procurations, so that in some dioceses they are not collected at all, *Archdeacon Pott* 405–407——Refusal by the Bishop of Oxford to receive procurations and synodals, as they are claimed by the Ecclesiastical Commissioners, *Davenport* 1082. 1101–1104——Collection of episcopal procurations and synodals in Chester archdeaconry for the Ecclesiastical Commissioners; objection made to the payment of these fees, *Archdeacon Johnson* 1764–1767. 1879, 1880.

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Collection of the bishops' procurations and synodals by the Ecclesiastical Commissioners, save in those cases where they have been remitted by the bishops, *Pringle* 2794–2797——Legal claim to the foregoing fees though this has been disputed; obstacle to their compulsory payment generally, so that it is intended to merge them in the livings whence they are due, *ib.* 2797–2799. 2822–2826——Estimate of from 700*l.* to 800 *l.* a year as the amount which the Commissioners could enforce in respect of bishops' procurations and synodals, *ib.* 2802, 2803. 2808–2818——Varying average of these fees in different dioceses, *ib.* 2821.

Doubt as to its being intended that episcopal procurations and synodals, as well as those payable to archdeacons, shall cease, *Brunel* 3541–3544.

*See* also *Chester Diocese*, 6. *Ecclesiastical Commissioners.*

*Provincial Judge.* See *Arches Court, &c.*

*Public Worship Regulation Act.* Conclusion that the Public Worship Regulation Act renders it unnecessary to continue the system of a separate judge of each diocesan court, *Day* 631–639——Grounds for concluding that the effect of the Public Worship Act will be to increase the work of Chancellors, *Brunel* 3314.

## Q.

*Queen's Proctor.* Familiarity of witness with all marriage questions, in his capacity as Queen's Proctor; convenience in his holding that office, as well as the Registrarship of the Province of Canterbury, *Dyke* 349–352.

## R.

*Raper, Robert George.* (Analysis of his Evidence.)—Is Secretary to the Bishop of Chichester, and is deputy registrar to the bishop for the Archdeaconry of Chichester, the diocesan registry being divided, and there being a separate registry at Lewes; is also the archdeacon's registrar, 1933–1943——The offices of secretary and deputy-registrar are held during pleasure, and have been so held by successive members of witness' firm for seventy years; statement thereon as to the registrarship having been formerly held by Lord Romilly, and being now held by Mr. Dunnford, a son of the bishop, 1944–1953. 1971–1977.

Grounds for the conclusion that it would be exceedingly objectionable to compulsorily unite the offices of secretary and registrar, 1954–1968. 1997–1999——Decided objection to the office of registrar being held at the will of the bishop, 1957–1966. 1969, 1970——Security for witness' tenure of office as deputy registrar through the registrar being non-resident; obstacle to the latter performing the duties as he is not a notary, 1978–1983.

Complaint that the deputy registrars, who really do the work, are wholly ignored in the Bill, and that a great injustice will be done them if the registrar be made removable at the pleasure of the bishop, 1984, 1985——Witness submits that the deputy-registrars should hold during good behaviour, and that those who are in office at the time of the passing of the Act should have the right of succeeding to the post of principal registrar, 1985. 1988–1996——Provision by witness, as deputy registrar, of an office, staff of clerks, &c.; advantage if there were a public office in every diocese, 1985–1988——Approval of the offices of secretary and bishop being united by arrangement, at the option of the bishop, 1998, 1999.

Evidence strongly adverse to the proposal for the collection of fees by stamps instead of in money; great inconvenience thereby to the clergy, whilst the registrars object to being made custodians and sellers of stamps, 2001 *et seq.*——Explanation in regard to the

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*Raper, Robert George.* (Analysis of his Evidence)—*continued.*

payments by the clergy for faculties, and the charge made for mileage according to the distance travelled in fixing notices on church doors, 2004–2010. 2035. 2050-2056.

Facility in Chichester diocese with respect to the payment of a fee of 5 *s.* for the consecration of an additional churchyard; no other fee is charged, 2036-2049——Recommendation that the clergy be bound to procure a faculty for all work done to the fabric of a church, and that a maximum fee of 2 *l.* 2 *s.* be charged for each faculty, exclusive of the charge for mileage, 2058–2062.

Paper submitted explanatory of the duties and remuneration of the several offices filled by witness, and of the ecclesiastical offices generally in the diocese of Chichester, together with suggestions in detail on the score of tenure of office, fees, collection by stamps, &c., *Ev. p.* 171–177.

Sufficient remuneration of witness by a payment of 400 *l.* a year, his emoluments as secretary and deputy registrar not coming up to that amount, 2066–2070——Customary payment of 15 *l.* a year to the registrar of the Archdeaconry of Chichester, out of which he has to pay 4 *l.* a year for land tax; this is the entire emolument of the sinecure, 2071–2081——Statement as to there having been only three contentious cases in the Chancellor's Court in the diocese during the last twenty-five years; small remuneration of the office of Chancellor, 2081–2091. 2095.

*REGISTRARS:*

1. *Question of uniting generally the Offices of Registrar and Bishop's Secretary.*
2. *Tenure of Office; suggestions on the subject.*
3. *Duties and Remuneration.*
4. *Resident Registrars.*
5. *Question of Union of the Office of Diocesan Registrar and Archdeacon's Registrar.*
6. *Contemplated employment of the same Registrar in London by several Bishops.*

1. *Question of uniting generally the Offices of Registrar and Bishop's Secretary:*

Inconvenience in a union of the offices of secretary and registrar in those diocese in which the bishop does not reside in the cathedral town; non-objection otherwise, *Lee* 481–485——Necessity of the work being concentrated in one place if the offices of secretary and registrar are to be united, *ib.* 502. 509–517——Practical difficulty in many cases if the offices of secretary and registrar be united; illustration in the diocese of Winchester, *Dunning* 604-610.

Approval of a union of the offices of bishop's secretary and registrar; difficulty, however, in the diocese of Rochester, *Day* 625–627. 639.

Performance of the duties of registrar of Oakham Archdeaconry by Mr. Gates, who is also registrar of the archdeaconry of Northampton, *Lord A. Compton* 1572–1574——Offices of registrar of the diocese and secretary of the bishop also filled by Mr. Gates, without any inconvenience arising, *ib.* 1575–1582——Approval of the proposed union of the offices of registrar and bishop's secretary, *ib.* 1611, 1612. 1678–1680——Entire convenience in witness' registrar being also registrar of the diocese of Chester, and secretary of the bishop, *Archdeacon Johnson* 1781–1796.

Grounds for the conclusion that it would be exceedingly objectionable to compulsorily unite the offices of secretary and registrar, *Raper* 1954–1968. 1997–1999——Approval of the offices of secretary and bishop being united, by arrangement, at the option of the bishop, *ib.* 1998, 1999——Decided objection to the proposed union, *Archdeacon Hamilton* 2601, 2602.

Experience of witness as secretary to the Bishop of Peterborough, and as registrar of the diocese, as well as of the archdeaconries of Northampton and Oakham, *Gates* 2876–2880. 2886–2890——Entire absence of inconvenience through these offices being held by one person; non-objection to their consolidation by law, *ib.* 2881–2884. 2899-2901.

Conclusion as to its being extremely desirable that the offices of secretary and registrar should be united, witness submitting that many difficulties now arise from divided responsibility in respect of the table of fees and other matters, *Brunel* 3625–3656——Economy in uniting the two offices in all cases instead of leaving it optional with the bishop, *ib.* 3653-3656——Contemplated removal of the office of the archbishop's secretary from Westminster to Doctors' Commons, if the proposed union of offices be carried out, *ib.* 3679–3682.

Resolution of the Committee that the office of secretary of a bishop may be continued, but that if so continued the salaries of the separate offices of registrar of the diocese and secretary shall not exceed the sum which may be assigned to the office of registrar, if the duties of both offices be performed by the same person, *Rep.* x.

2. *Tenure*

*REGISTRARS*—continued.

2. *Tenure of Office; suggestions on the subject:*

Belief that the registrar is appointed always by patent, for life, *Monk* 151–154——Grounds for recommending that the registrar be appointed during good behaviour, instead of during the pleasure of the bishop, *ib.* 154–157. 166–185——Approval of the tenure of office being for life if the office of secretary and registrar be united, *ib.* 165, 166——Tenure of witness' office under patent, for life; decided objection to his being removable at the pleasure of the archbishop, *Dyke* 339–346. 365–372——Approval of the registrar being removable at pleasure, *Archdeacon Pott* 461–463——Reasons for the office of registrar being a freehold for life, whilst that of secretary is held at the will of the bishop; difficulty on this score in a union of the two offices, *Lee* 545–554.

Grounds for the opinion that the office of registrar should be held during good behaviour, and not at the will of the bishop, *Dunning* 589–594——Evidence in support of the conclusion that the registrars should hold office during good behaviour, instead of during pleasure, as proposed by the Bill; difficulty in the latter case as to the custody of the records, *Deane* 956–1003——Opinion adverse to a union of the offices of registrar and bishop's secretary; difficulty as to the tenure being during pleasure or good behaviour, *Deane* 1038–1043——Reasons submitted in favour of registrars having a tenure of office in perpetuity, *Davenport* 1078——Disapproval of the proposal in the Bill that the registrar shall hold office at the pleasure of the bishop, *Boyd* 1201–1204——Facility in obtaining advice from the registrar, though he may enjoy a freehold office, *Archdeacon Kaye* 1291–1294.

Evidence in support of the conclusion that the registrar of the diocese should not be removable at the pleasure of the bishop; instances, however, of very efficient deputy registrars removable at pleasure, *Dean of Lichfield* 1443–1486——Doubt as to the registrar feeling the same interest in his office unless he held it for life, *ib.* 1445–1451. 1461–1466——Concurrence in the view that the present tenure of office by registrars is open to abuse, and should be amended, *ib.* 1467–1469——Suggestion that the registrar should hold office during the incumbency of the bishop; expected re-appointment on a vacancy, 1470, 1471. 1474——Approval of appointment during good behaviour, with liability to removal for cause assigned in the order of removal, *ib.* 1472, 1473——Opinion that the registrar and secretary, when united, should hold office during good behaviour, and only be removed for cause assigned, *Lord A. Compton* 1620–1626.

Decided objection to the office of registrar being held at the will of the bishop, *Raper* 1957–1966. 1969, 1970——Grounds for strongly objecting to the proposed union of the offices of registrar and bishop's secretary; expediency of the registrarship being a freehold office, tenable during good behaviour, *Espin* 2266–2280. 2287–2291——Prejudice to the clergy in Chester diocese, if the registrar held a temporary office; valuable advice given by him to the clergy, *ib.* 2270. 2283–2286. 2380——Probability that inconvenience would not arise if the registrar were only removable on cause assigned, *ib.* 2281.

Opinion that the registrar of the bishop should hold during good behaviour, and that his tenure should not depend upon the avoidance of the See, *Archdeacon Hamilton* 2659——Grounds for the opinion that if the offices of secretary of the bishop and registrar of the diocese be united, the holder of the united offices should not be removable at pleasure, *Gates* 2885–2892. 2940–2942——Objection to the removal of the bishop's registrar on the vacancy of the See as a matter of course, *ib.* 2940, 2942——Explanation that witness has not any decided opinion upon the question whether a bishop's registrar should be appointed during pleasure or during good behaviour, *Gibbs* 3128–3137——Grounds for the conclusion that the tenure of the united offices should be during pleasure; the objections urged on this score cannot be supported, *Brunel* 3664–3682.

Resolution of the Committee that the office of registrar of a diocese ought to be held during pleasure, *Rep.* viii, x.

3. *Duties and Remuneration:*

Difficulty on the score of building accommodation and expense if the registrar is to provide the former whilst his office is united with that of secretary; inadequate scale of remuneration in the Bill for the united offices, *Lee* 506–517——Entire inadequacy of the salaries proposed by the Bill for the united offices of registrar and secretary, *Lee* 577, 578; *Davenport* 1078——Expediency of some provision for a retiring pension for the registrar, *Dunning* 595——Suggestion made by some registrars that they should have power to administer oaths, as well as the surrogates, *ib.* 596——Decided insufficiency of the scale of remuneration proposed for the registrars if the several offices be amalgamated, *ib.* 609. 611, 612.

Contemplated assignment of contentious and non-contentious business respectively, to the principal registrar appointed during good behaviour and to diocesan registrars appointed during pleasure, *Day* 639——Contemplated apportionment of duties by the bishop in the event of two persons being appointed in any diocese to fill the office of registrar, *Deane* 1044–1048.

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3. *Duties and Remuneration*—continued.

Importance of some legislation in order to put an end to sinecure registrarships, as in the diocese of Oxford, where the Rev. C. W. Bagot is registrar and his brother reversioner, *Davenport* 1051–1056. 1073. 1105, 1106——Improbability of any future appointments to the office of registrar being sinecures, *ib.* 1074——Objection to the provisions as to registrars doing extra duties without any extra remuneration, *ib.* 1078——Purely ministerial character of the office of registrar, *ib.* 1108–1111.

Limitation desirable generally as regards the salaries paid to registrars; approval of a payment of 750 *l.* a year, as proposed by the Bill, *Stevens* 2704–2717——Very little difficulty to registrars in the issue of unopposed faculties, *ib.* 2738–2740——Statement as to the duties of the registrar not being judicial, *Brunel* 3682.

4. *Resident Registrars:*

Approval of the proposed abolition of the freehold tenure of the office of diocesan registrar, *Day* 639——Special importance attached to the registrar being resident in the diocese, *Archdeacon Johnson* 1787–1791——Decided objection to a man being registrar of more than one diocese; that is, on the score of residence, *ib.* 1881–1884——Decided approval of the provision in the Bill that the registrar shall do his duties in person, *Espin* 2282, 2283——Expediency of the diocesan registrar being resident in the cathedral town; belief that there would be no difficulty on this score, as regards the proposed union of offices, *Gates* 2892. 2902–2904.

5. *Question of union of the Office of Diocesan Registrar and Archdeacon's Registrar:*

Objections raised by some archdeacons as to the registrar of the bishop acting also as the registrar of the archdeacons; witness, however, sees no difficulty of any moment on this point, *Archdeacon Pott* 411–418. 429——Importance of the registrar being legally qualified, and attending personally at each archdeacon's visitation, *ib.* 414–418——Small remuneration of witness' registrar; amount of work performed by him in return, *ib.* 422–429.

Improvement in the Bill, if it more clearly provided that the new registrar shall discharge the duties of the archdeaconry, *Archdeacon Prest* 1141——Approval generally of the same person being registrar of the diocese and of the archdeaconry; difficulty as to remuneration in some cases, *Boyd* 1189, 1190. 1199, 1200. 1218–1223——Advantage generally of a union of the offices of registrar of the diocese and registrar of the archdeaconry; probable difficulty in Lincoln diocese where there are three archdeacons, *Archdeacon Kaye* 1282–1297——Approval of a union of the offices of registrar of the archdeaconry and registrar of the diocese, *Dean of Lichfield* 1439–1442.

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Comment upon the disappearance from the Bill of the provision that the diocesan registrar shall act as archdeacon's registrar, *Archdeacon Hamilton* 2693–2695——Suggestion that it be specified in the Bill that the person holding the combined offices of bishop's registrar and archdeacon's registrar shall do the duties of the latter office, *Gibbs* 3032, 3033.

Resolution of the Committee that the duties now performed by the official of any archdeacon or archidiaconal court shall, if not performed by the archdeacon himself, be performed by the registrar of the diocese, *Rep.* x.

6. *Contemplated employment of the same Registrar in London by several Bishops:*

Facility under the Bill for one registrar acting in London for a great number of bishops, *Brunel* 3623, 3924. 3648–3652.

*See* also *Canterbury* (*Provincial and Diocesan Registries*). *Chester Diocese*, 3. *Chichester Diocese.* *Deputy Registrars.* *Diocesan Records.* *Gloucester and Bristol Diocese.* *Peterborough Diocese.* *Registry Offices.*

*Registry Offices.* Expediency of a permanent registry office in each diocese, *Monk* 168–172. 183, 184; *Archdeacon Pott* 460——Want of a public registry in London belonging to the diocese, *Lee* 511, 512——Difficulty in the conduct of the business by the registrar if the muniments are not under the same roof where the work is carried on, *ib.* 513–515.

Compensation desirable in cases where registrars or deputy registrars have provided muniment rooms, *Davenport* 1078——Provision by witness as deputy registrar of an office, staff of clerks, &c.; advantage if there were a public office in every diocese, *Raper* 1985–1988——Importance attached to the provision of a permanent registry in each diocese, this not being provided for by the Bill, *Stevens* 2760, 2761.

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Grounds for the objection by the Committee of Convocation of York to real and personal property, under section 4 of the Bill, being disposed of by those persons who are to frame the rules and orders, *Archdeacon Hamilton* 2635–2639.

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*Ripon Diocese.* Inadequate payment of the registrar of the diocese of Ripon; other offices united in him, *Boyd* 1190. 1199, 1200. 1208, 1209. 1218–1223——Feeling among the clergy in Ripon diocese adverse to any of the fees going to the payment of the Judge of the Arches, *ib.* 1191–1195.

*Rules and Orders.* Complaint as to the proposal that the Bill is to be carried out by rules and orders made by the two Archbishops, the Lord Chancellor, and others; expediency of the rules and orders being embodied in a Schedule to the Bill, *Dyke* 320–330, 347, 348. ——Objection further raised as regards the proposal in the Bill whereby the fees, &c. may be altered by rules and orders made by a body comprising the Archbishops, the Lord Chancellor, and other high authorities, *ib.* 373–379.

Expediency of the parochial clergy having some voice in the settlement of the rules and orders for the regulation of fees; means suggested for this purpose, *Archdeacon Pott* 410 ——Suggestions with a view to the machinery of the Bill being worked by the provincial judge under the rules and orders; avoidance thereby of the expense of bringing in the Ecclesiastical Commissioners, *Deane* 1028–1030.

Objection to the framing of the rules and orders for the different dioceses by a central body, *Archdeacon Hamilton* 2590-2600——Suggestion that the provincial judge be one of the persons who are to meet and make rules and orders, *Gibbs* 3063——Advantage if there were a Member of Parliament among those by whom the rules and orders are made, *ib.* 3063–3067.

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Recommendation by the Committee as to the Act being carried into effect by means of rules, to be framed by a central body, *Rep.* x.

Resolution of the Committee that there shall be an advising body representative of the interests of the several dioceses, which shall meet within three months of the passing of the Act, to make recommendations to the central body, *Rep.* x.

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*Salaries.* Opinion that, by means of rules and orders, an undue power is given of making regulations and imposing obligations which may greatly diminish the salaries provided, *Lee* 523, 524——Insufficient protection from loss on the score of the present holders of the offices of registrar and chancellor, who derive their incomes in a main degree from the marriage license fees, but who may suffer under the Bill by a reduction of the ecclesiastical fees, *ib.* 524–543——Insufficiency of the remuneration provided by the Bill if two officers are appointed to fill the joint office of registrar and secretary, *Lee* 577, 578; *Davenport* 1078.

Expediency of the existing officers being protected as much as possible before the salaries to the new officers are provided, *Dunning* 621, 622——Decided opinion that it is preferable to pay the secretaries and registrars by fees than to put them upon salaries, *Day* 628–630. 639.

Approval of payment by salary instead of by fees, *Lord A. Compton* 1632—— Comment upon certain provisions of the Bill with reference to the salaries being made up to their fixed amount, in the event of the fee fund falling short, *Gibbs* 3045–3055.

Resolution of the Committee that the remuneration of officers, provincial and diocesan, shall be paid by salary; also that such salaries shall be paid out of the central fee fund, *Rep.* x.

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*Scale of Fees.* Belief as to the table of fees, approved by the Queen in Council, not having been returned, and having caused some dissatisfaction, *Monk* 161–164——Opportunity, under witness' plan of payment by fees, of readily ascertaining what reduction or remission of fees can be effected, *Day* 639——Important modifications necessitated in the

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Effect of the Bill to reduce to the lowest possible number the legal officers required for the conduct of the business of the Church, and to pay them on a very moderate scale, so that the result will be a reduction of fees, *Brunel* 3327——Means of remitting between 25 and 30 per cent. of the fees if the Bill come into operation, *ib.* 3451, 3452——Estimated remission of 10*s.* a year to each clergyman, it being expedient first to reduce the ordination fee, *ib.* 3495–3500——Approval of a suggestion as to the archdeacons and the proctors in Convocation taking part in the meeting for considering the table of fees, *ib.* 3692, 3693.

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*Schedule* (*D*). Suggested amendment of the wording of the declaration in Schedule (D.) as to the discharge of duties, *Gibbs* 3035–3038.

*Secretaries* (*Bishops and Archbishops*). Important and laborious duties of the archbishop's secretary, *Dyke* 253——Varied character of the duties devolving upon a bishop's secretary, or upon the secretary to the Archbishop of Canterbury, *ib.* 498–501——Question considered whether the bishops' secretaries should not be paid by the bishop personally instead of out of the general fund; statement hereon as to each bishop having a chaplain or private secretary whose duties are distinct from those of the legal secretary, *ib.* 570–576.

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*Sequestrations.* Decided approval of the sequestration of livings during a vacancy; respects in which advantageous to the future incumbent, *Gates* 2961–2979. 2981–2988. 2992–2995 ——Practice as to the issue of sequestrations in Peterborough diocese, unless it is known that the living is going to be filled up very soon; explanation hereon as to the fees charged, and their payment, *ib.* 2962–2967. 2980. 2987. 2989–2991——Instance of a living vacant for more than six months, and under sequestration; duty of the churchwardens to receive the tithes. *ib.* 2992–2995——Practice in the diocese as to the charge of only a moderate fee for taking out sequestrations, *ib.* 3002, 3003.

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*Stamps* (*Payment of Fees*). Improvement if fees were paid by stamps procured from the Inland Revenue officers, *Monk* 63, 64. 138–141——Examination to the effect that much inconvenience would result if the fees for marriage licenses were collected in stamps instead of in money, *Dyke* 302–319—— Inconvenience and trouble, without any corresponding advantage, if the fees were collected by stamps, *Lee* 518–522. 555–559.

Inconvenience to clergymen in country districts if it were necessary to pay fees by stamps, *Dunning* 596——Decided objection to the registrar being required to issue the stamps; the duty should be imposed rather upon the Inland Revenue Office, *ib.* 596–603 ——Objection also to the duty of providing stamps being imposed on the Ecclesiastical Commissioners, *ib.* 600–604.

Considerable inconvenience in collecting all fees by stamps, *Deane* 953–955——Suggestion that the Inland Revenue officers are the proper bodies to be vendors of, and accountable for, stamps, *Davenport* 1078——Objection to churchwardens being required to pay their fees in stamps; increased trouble thereby, *ib.* 1089–1091. 1095–1097—— Non-objection to the proposed collection of fees by stamps, *Boyd* 1189.

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of in money; great inconvenience thereby to the clergy, whilst the registrars object to being made custodians and sellers of stamps, *Raper* 2001 *et seq.*——Objection to the proposed collection by stamps, *Archdeacon Hamilton* 2610——Considerable trouble and delay apprehended if the proposal as to payment by stamps be carried out, *Gibbs* 3044, 3045.

Evidence in explanation and approval of the proposal in the Bill that all the fees which go into the fee fund should be paid by stamps to be obtained from the registrars, *Brunel* 3550 *et seq.*——Explanation as to its being proposed to bring in the Ecclesiastical Commissioners as stamp distributors, instead of its resting with the Inland Revenue, *ib.* 3552–3558. 3607–3616——Tendency of payment by stamps to simplify the accounts, and to prevent irregular charges which are not now in the table of fees, *ib.* 3569.

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*Stevens, The Rev. Charles Abbot.* (Analysis of his Evidence.)—Complaint on the part of the clergy generally as to the heavy incidence of the fees for presentation, institution, and induction, the total amounting to 17*l.* 16*s.* 6*d.*, 2696–2703——Uniform fee of 7*l.* 13*s.* 6*d.* since 1857 upon institution, 2701, 2702——Expediency of the fees being proportionate to the value of the living, 2703——Approval of the power taken by the Bill for graduating the fees, 2704, 2705.

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Duties discharged by the surrogate in London relatively to those of the surrogate in the country, *Brunel* 3481–3488.

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*Sustentation of the Fabric.* Importance of a collection for sustentation of the fabric in every parish where a church rate is not collected, *Deane* 781, 782——Means of providing

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for the maintenance of the fabric in parishes in the Archdeaconry of Buckingham in which church rates are not collected; illustration at Aylesbury, *Dean of Lichfield* 1381, 1382. 1400, 1401.

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T.

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U.

*Union or Abolition of Offices.* Approval of the abolition or amalgamation of certain offices as proposed by the Bill, *Monk* 87–89; *Deane* 1030——Room for reduction in the number of ecclesiastical officers, *Jeffreys* 1728.

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V.

*Vicars General*:

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Judicial function exercised by the vicar general in the case of the confirmation of bishops of the southern province; comment upon the proceedings in such cases, the judicial office not being of any real importance, *Deane* 652–662——Doubt as to the vicar general having any right to be called in by the archbishop as assessor or legal adviser in certain cases, though this is almost invariably the practice, *ib.* 663–667——Very complicated and varied nature of the questions upon which the vicar general sits as legal adviser of the archbishop, *ib.* 668–676.

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Important duty of the vicar general of the province of Canterbury in the appointment of surrogates, and in deciding questions connected with marriage licences, *Brunel* 3256. 3261–3264——Large increase of labour of the vicar general of the province if all contested cases in respect of licenses were referred to him, *ib.* 3265–3268. 3273, 3274.

Several duties discharged by the Chancellor of Ely in his capacity as Vicar General for the diocese; obstacle to these being transacted by a central chancellor in London for the whole province, *Brunel* 3306–3310——Function of the vicar general as legal adviser of the bishop in difficult questions which are not settled by the secretary, *ib.* 3308. 3312.

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it clear that it is not intended that the same person shall hold the offices of vicar general or chancellor and registrar, *Brunel* 3621-3623——Misapprehension of Dr. Deane in regard to the remuneration of the vicar general and certain other officers under the Bill, *ib.* 3684, 3685.

*Visitations of Archdeacons.* Great desire on the part of the archdeacons that nothing should be done by the Bill to interfere with their visitation courts, or to discourage the presence of the churchwardens thereat; doubt however of witness as to the Bill having this effect, *Archdeacon Pott* 384-390——Considerable value attached to the archdeacons' visitations and to the attendance of the churchwardens, *Archdeacon Pott* 395. 430-432; *Deane* 833-845; *Dean of Lichfield* 1335, 1336. 1346-1349; *Jeffreys* 1729-1734; *Archdeacon Johnson* 1917——Advantage in the visitations being held at different centres, so that the churchwardens may not have too far to go, *Archdeacon Pott* 419-421.

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W.

*Wales.* Suggestion that Wales be more distinctly included in the Bill than it appears to be under the third section, *Gibbs* 3025.

Y.

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The gross value of the living of Yelling is 330 *l.* a year, but this is reduced to 240 *l.* net value (with a house), by payments to Queen Anne's Bounty, and by fees, rates, &c.; particulars hereon, *Nowers* 2383——Heavy expenses entailed upon witness on institution to the living, the Lord Chancellor having presented him, *ib.* 2390-2394——Total payment of 14 *l.* to the presentation office in stamps and fees; items of this charge, *ib.* 2305. 2411——Payment of 7 *l.* 17 *s.* by witness to the bishop's secretary for institution fees, to the chancellor, registrar, secretary, &c., *ib.* 2412-2423.

Explanation in connection with certain fees and charges paid to the registrars of Huntingdon and Ely respectively in respect of sequestration; payment of 4 *l.* 13 *s.* 4 *d.* to the former, and of 1 *l.* 1 *s.* 6 *d.* to the latter, whereas only one such charge is legal, *Nowexs* 2424 *et seq.*——Exception taken to the sequestration of the living pending witness' appointment; expense involved without any corresponding benefit, *ib.* 2427-2443. 2466-2476——Several items comprised in the Bill of the registrar of Huntingdon for 4 *l.* 13 *s.* 4 *d.*, witness submitting that the charge is excessive, *ib.* 2444-2464. 2483——Induction fees of 2 *l.* 10 *s.* included in this amount, *ib.* 2445——Dispute between the two registrars as to which is entitled to the sequestration fee, witness in the meantime being unable to get any of his money back though only one charge is legal, *ib.* 2455-2465. 2477-2486.

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Complaint as to witness having been charged, under the Dilapidations Act, 6 *l.* 7 *s.* for the surveyor, 3 *l.* 12 *s.* for the bishop's secretary, and 15 *s.* 4 *d.* for the registrar; grievance more especially in respect of the secretary's fee, *Nowers* 2507-2524. 2528-2533. 2540. 2555, 2556——Very heavy charge upon witness for poor rates, *ib.*, 2525, 2526——Large payment also in respect of a loan from Queen Anne's Bounty for the parsonage house, *ib.* 2527, 2528—— Excellent state of repair in which witness left his house in his late living, whereas he has been called upon to pay 10 *l.* 14 *s.* 4 *d.* for fees in respect of the dilapidations in his present living, *ib.* 2528-2533.

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# REPORT

FROM THE

## SELECT COMMITTEE

ON

# EMPLOYERS LIABILITY FOR INJURIES TO THEIR SERVANTS;

TOGETHER WITH THE

## PROCEEDINGS OF THE COMMITTEE,

AND

## MINUTES OF EVIDENCE.

*Ordered, by* The House of Commons, *to be Printed,*
21 *July* 1876.

*Thursday, 22nd June* 1876.

*Ordered,* THAT a Select Committee be appointed to inquire whether it may be expedient to render Masters liable for Injuries occasioned to their Servants by the negligent Acts of Certificated Managers of Collieries, Managers, Foremen, and others to whom the general control and superintendence of Workshops and Works is committed, and whether the term "Common Employment" could be defined by Legislative Enactment more clearly than it is by the Law as it at present stands.

Committee nominated of—

| | |
|---|---|
| Sir John Holker. | Mr. Tennant. |
| Mr. Lowe. | Mr. Mundella. |
| Mr. Wyndham. | Mr. Knowles. |
| Sir Henry Jackson. | Mr. Eustace Smith. |
| Mr. W. Stanhope. | Mr. Gibson. |
| Mr. Shaw Lefevre. | Mr. Meldon. |
| Sir Daniel Gooch. | Mr. Cawley. |
| Mr. Macdonald. | |

*Ordered,* THAT the Committee have power to send for Persons, Papers, and Records.

*Ordered,* THAT Five be the Quorum of the Committee.

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# REPORT.

THE SELECT COMMITTEE appointed to inquire whether it may be expedient to render MASTERS liable for INJURIES occasioned to their SERVANTS by the negligent Acts of Certificated Managers of Collieries, Managers, Foremen, and others to whom the general control and superintendence of Workshops and Works is committed, and whether the term "Common Employment" could be defined by Legislative Enactment more clearly than it is by the Law as it at present stands; ——HAVE considered the matters to them referred, and have agreed to the following REPORT:—

YOUR Committee beg to report that they have heard Evidence on the questions referred to them, but finding it impossible to obtain all the Evidence which is desirable during the present Session, they have determined to report the Evidence already taken to the House, and recommend that the subject be further investigated in a future Session.

21 *July* 1876.

# PROCEEDINGS OF THE COMMITTEE.

## *Friday, 7th July* 1876.

MEMBERS PRESENT:

| | |
|---|---|
| The Attorney General. | Mr. Wyndham. |
| Mr. Cawley. | Mr. Eustace Smith. |
| Mr. Lowe. | Sir Daniel Gooch. |
| Mr. W. Stanhope. | Mr. Tennant. |
| Mr. Macdonald. | |

Mr. LOWE was called to the Chair.

The Committee deliberated.

[Adjourned till Tuesday next, at Twelve o'clock.

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## *Tuesday, 11th July* 1876.

MEMBERS PRESENT:

Mr. LOWE in the Chair.

| | |
|---|---|
| Mr. Macdonald. | Mr. Cawley. |
| Mr. Eustace Smith. | Mr. W. Stanhope. |
| Mr. Tennant. | Mr. Shaw Lefevre. |
| Mr. Knowles. | Sir Henry Jackson. |
| Sir Daniel Gooch. | |

Mr. *George Howell* was examined.

[Adjourned till Friday next, at Twelve o'clock.

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## *Friday, 14th July* 1876.

MEMBERS PRESENT:

Mr. LOWE in the Chair.

| | |
|---|---|
| Mr. Knowles. | Mr. Meldon. |
| Mr. Eustace Smth. | Sir Daniel Gooch. |
| Mr. Macdonald. | Mr. W. Stanhope. |
| Mr. Cawley. | Mr. Shaw Lefevre. |
| Mr. Tennant. | Mr. Mundella. |

Mr. *Courtenay Ilbert* and Mr. *Joseph Brown*, Q.C., were severally examined.

[Adjourned till Tuesday next, at Twelve o'clock.

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## *Tuesday*, 18*th July* 1876.

MEMBERS PRESENT:

Mr. LOWE in the Chair.

| | |
|---|---|
| Mr. Macdonald. | Mr. Shaw Lefevre. |
| Mr. Knowles. | Mr. Tennant. |
| Mr. Eustace Smith. | Mr. W. Stanhope. |
| Mr. Wyndham. | Sir Daniel Gooch. |

Mr. *R. S. Wright*, Mr. *G. Broadhurst*, and Mr. *Frederick W. Evans*, were severally examined.

[Adjourned till Friday next, at Twelve o'clock.

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## *Friday*, 21*st July* 1876.

MEMBERS PRESENT:

Mr. LOWE in the Chair.

| | |
|---|---|
| Mr. Cawley. | Mr. Eustace Smith. |
| Mr. Knowles. | Sir Daniel Gooch. |
| Mr. Macdonald. | Mr. Wyndham. |
| Mr. Tennant. | |

Mr. *Benjamin Hannen* was examined.

REPORT brought up, and read the first time, as follows:

"Your Committee beg to report that they have heard evidence on the questions referred to them, but finding it impossible to obtain all the evidence which is desirable during the present Session, they have determined to report the evidence already taken to the House, and recommend that the subject be further investigated in a future Session."

REPORT read a second time, and *agreed to*.

Question, "That this be the Report of the Committee to the House,"—put, and *agreed to*.

*Ordered*, To Report, together with the Minutes of Evidence.

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## EXPENSES OF WITNESS.

| NAME OF WITNESS. | Profession or Condition. | From whence Summoned. | Number of Days Absent from Home, under Orders of Committee. | Allowance during Absence from Home. | Expenses of Journey to London and back. | TOTAL Expenses allowed to Witness. |
|---|---|---|---|---|---|---|
| | | | | £. s. d. | £. s. d. | £. s. d. |
| Frederick William Evans. | General Secretary, Amalgamated Society of Railway Servants. | 25 Finsbury-place, E.C. | 2 | - 16 - | - nil - | - 16 - |

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# MINUTES OF EVIDENCE.

*Tuesday*, 11*th July* 1876.

MEMBERS PRESENT:

Mr. Cawley.
Sir Daniel Gooch.
Sir Henry Jackson.
Mr. Knowles.
Mr. Shaw Lefevre.
Mr. Lowe.
Mr. Macdonald.
Mr. Eustace Smith.
Mr. W. Stanhope.
Mr. Tennant.

THE RIGHT HONOURABLE ROBERT LOWE, IN THE CHAIR.

Mr. GEORGE HOWELL, called in; and Examined.



*Chairman.*

1. WHAT is your occupation?—It has been for about these last 10 years that of a kind of Parliamentary Secretary or Parliamentary Agent, both with regard to Trades Union and political matters, but my special experience with regard to accidents has been more particularly in the building trades.

2. Are you aware of the object for which this Committee is appointed?—Yes, I am.

3. Have you read the Order of Reference?—I have.

4. Have you any statement that you would like to make to the Committee?—I have not prepared any statement.

5. What is your view with regard to the subject which is referred to this Committee; that is to say, the question as to extending the remedies of workmen for injuries, and the question of defining the expression "common employment"?—My view with regard to it is that the Bill which has been before the House, and which has been referred to this Committee, should be passed into law, or something similar to that Bill. I have never seen any reason to believe that it is justifiable at all to make a distinction between workmen and strangers, or between workmen in common employment and strangers.

6. There is no Bill referred to this Committee that I am aware of. What Bill is it that you are speaking of?—I am referring more particularly to a Bill which was brought into the House of Commons by Mr. Macdonald and others. There is one clause in the Bill which will define, in the briefest possible way, what my view is with regard to the special case. That clause was the chief point in the discussion.

7. Will you read the clause?—"Where any action or proceeding is brought for recovery of damages or of compensation in respect of bodily injury or loss of life it shall not be a ground of defence that the person by whose negligence the injury or loss of life, is alleged to have been occasioned, was employed in a common employment with the person injured or killed, or that the risk of injury or loss of life was knowingly or voluntarily incurred by the person injured or killed in the course of his employment. No person to be liable to pay damage or compensation if the person injured materially contributed by his own negligence to the accident." These are the only clauses in the Bill, the rest being provisos and definitions.

*Chairman*—continued.

8. That is what you wish to see done?—Yes, that is what I wish to see done.

9. Will you state any reasons which you have for that view?—In the first place it seems to me that it should not be a ground of defence if a person injured was in common employment with those who caused the accident, for the person injured might have had no possible control whatever over the cause of the accident. Take, for example, a man employed in the building trades, whether a mason or a bricklayer, or a carpenter, or a plasterer, or a painter; any one of those men would be ordered on to a scaffold to do some work. He would have no knowledge whatever as to the safety or security of that scaffolding. That is always relegated to another, quite a different class of men called scaffolders. The scaffolder is supposed to be responsible for its safety, he being in authority under the employer, and a workman would not as a rule even understand whether that scaffolding was perfectly secure or not. In the next place if he attempted to go all round the building to see if the scaffolding was secure, the foreman or the employer would very likely

Mr. *Howell.*

11 July 1876.

*Chairman*—continued.

likely turn him adrift at once, and say, your business is to go on the scaffolding, and do the work. I have employed men on purpose to erect the scaffolding. Therefore he (the workman) takes it for granted when he begins his work that the scaffolding has been made secure and safe.

10. Is there any other ground which you could mention?—It seems to me that the person who has been injured, unless he has by himself contributed to that injury or the cause of that injury, should receive compensation for any injury sustained, or his friends in case of loss of life, the same as a stranger, because he would not in any way be any more responsible than a stranger for any power over the cause of the accident. Instances could be given, it seems to me, that would bear out that view. Take one recent instance that came before a coroner's jury, but which, I suppose, is not likely to come into court as a matter of compensation. About a fortnight or three weeks ago a lad about 16 years of age or a little over, was employed in the printing establishment of Messrs. Letts and Sons, where he had to place a band over the drum of a wheel during the time that the wheel was in motion, revolving, if I remember rightly, at the rate of 120 revolutions per minute. By some means or other the band slipped or the hand slipped, and the youth was swiftly thrown round by the wheel for a great number of times, and they had to cut the band ultimately in order to get the pieces away from the wheel. It seems to me in a case of that description that although the young man knew that there was a certain amount of danger connected with placing the band over this wheel no employer had a right to ask the youth to place a band over a wheel when it was revolving at the rate of 120 revolutions per minute, and it was scarcely competent to the youth to refuse to do it because the employer or the foreman at the time would have said, "If you don't do it, some one else will," because it was alleged before the jury that other establishments did a similar thing.

11. What do you say to the argument which is to be found in cases on this subject, that a person calculates the risk when he enters into the employment and is paid higher wages accordingly?—I do not think that can be borne out by facts in any instance. It seems to me that when a man enters an employment he takes it for granted that everything has been done to make that employment safe and secure. There are some trades in which the risk is greater than in other trades, and a man knows that he has a greater risk to run when he goes on to a scaffold of a building or goes into a mine than he would if he was employed as a shoemaker or a tailor; still at the same time he feels that he has a right to rely upon the general safety of the mine or the general safety of the scaffold before he goes on to it, and he takes it for granted. It seems to me that unless a man had faith in his employer that he would do everything necessary to make the employment safe, we should not find men who would go into a mine or go on to a scaffold.

12. Is there any such difficulty experienced at present in finding persons to go into mines or on to scaffolds?—No, I think not; but in cases of that kind, although they know that there is a certain amount of risk, it is tolerably well known that the labour market is so full at present that they are only too glad to get employment in

*Chairman*—continued.

almost anything, and they are prepared to run a certain risk in the employment which they undertake. But the question of risk, it seems to me, is never taken into consideration. If that is so, take the case of a labourer and the case of a bricklayer: the labourer as a rule, I think, would run a greater risk than the bricklayer. He would run a risk in the first place in erecting the scaffold, and he would run a risk in running about from place to place over the scaffold, more than the bricklayer would do; but in that instance the labourer is paid very much under the bricklayer. Of course the question of skill would be taken into account, but sometimes there is a considerable amount of skill required in erecting a scaffold.

13. Is there any other matter which you would wish to state to the Committee upon this question?—I do not know that there is, unless any honourable Member of the Committee would like to ask me some questions.

14. With regard to the second point, "common employment," what have you to say about that?—I think I have answered to some extent that question in my earlier replies; but my opinion is this, that a man who goes into a common employment (that is, as I understand, common employment as defined by law appertaining to those cases), if he is injured, might have nothing whatever to do with the cause of the accident, or the accident itself, except that he himself was the injured person. He might only casually, as it were, be a fellow servant with the person who was the cause of the injury.

15. Will you illustrate exactly in what sense you use those words. Can you give the Committee a case of what you think ought to be, and ought not to be, considered common employment?—I should hardly like to say what I thought ought to be, and ought not to be, common employment, because I do not think exactly that the question of common employment should be taken into account in the case of an accident, unless the person injured had contributed to the accident. A great number of persons, for instance, might be employed in a building, say 500 men, or perhaps a thousand men; scarcely one out of those thousand men would have anything to do whatever with the scaffold or the gear, or the machinery, or anything else that might cause the accident, and yet all those men would be in a certain sense, and, as I understand it in the sense as defined by law, in common employment with those who caused the accident.

16. But a case like this, supposing that a miner takes off the wirework that protects his lamp in the case of fire damp, and occasioned an explosion, would you say that the master should be liable for that?—I feel that the master should be liable to the persons injured, other than the person himself.

17. You would regard him, in fact, as on exactly the same footing as a stranger?—Yes.

18. The same as is done with railways?—Yes, as is done with railways.

Mr. *Tennant.*

19. Can you explain whether the case of the boy that was whirled round upon the wheel that you mentioned, had to do with the negligence of any servant or any other person in the employ of the manufacturer?—No; in that case no one was injured but himself.

20. How do you connect that with the liability of

Mr. *Tennant*—continued.

of the master?—It seems to me that the particular case which I quoted was a rather extreme one; in that particular case the youth, although in a sense the cause of the injury, because he undertook to place the rope on the wheel, yet the fact of a youth of 16 years of age to place a band over the drum of a wheel revolving at that rate, was a thing which ought never to have been asked. The motion of the wheel ought to have been considerably lessened, but not quite stopped, because then of course the band could not be placed over it, but so considerably lessened that the risk of danger would be almost *nil*.

21. What has been referred to this Committee to inquire into is the damage arising from certificated managers, and managers and so on; I want to know whether that particular case has reference to this question upon which we are inquiring?—As referring to certificated managers only.

22. So far as mines are concerned with reference to managers, foremen, and others to whom the general superintendence and control of the work is committed, I want to know how you connect that case at all with the subject of this inquiry?—In this way. It seems to me that whenever any one is placed at an employment by the employer or by a person in authority under the employer, whereby injury is caused to the person or to other persons in the employ, that that man or that firm should be held liable for the accident.

23. You say that you think that an operative or servant does not take into account the risk that is incurred in the employment when he enters into an engagement because the labour market is so full; but the market was not always full of labour, and how would it be if there was a greater difficulty in getting workpeople?—I scarcely intended to put it exactly as you have put the case to me now. I put the case rather thus, that there was so much labour generally in the market that men were glad to take almost anything that was offered to them; but with regard to the special case, as put by the Committee, it seems to me that the man who undertakes an employment might know that that employment would be in itself more dangerous than some other employments, such, for instance, as a builder's operative or a miner, being in more danger than a shoemaker or tailor, but yet he took it with the understanding that the conditions under which he went to work were generally secure and safe; at least as safe as they could expect a thing of that kind to be safe, and he undertook the risk on the understanding that the thing was as safe as human invention could make it.

24. Would you say that the conditions are the same, whether there was a difficulty in getting employment, or whether there was a difficulty in getting workmen?—No; scarcely so. I think that in any case the man takes it for granted when he undertakes to do any work that the conditions by which it is surrounded are or ought to be safe.

25. You say you think that the employer should be liable for any accident that may happen to any of those in his employment; would you make that person primarily responsible who was the direct cause of the accident?—No, I would not, unless he happened to be the employer himself. It seems to me that if an employer himself superintends the operations, as in small firms, or whether he relegates that power to a foreman or overlooker, or manager, or clerk, the liability should be the same so far as compensation is concerned. If there was any individual default, whereby a person was injured through the fault of another, it seems to me that that other should be punished criminally. It should be a criminal case instead of a civil one.

Mr. *Tennant*—continued.

26. You would make the fellow-workman criminally responsible, and make the master responsible in damages?—Quite so.

27. Then you would have two sets of proceedings in case of an accident, supposing there were an accident in the case suggested by the Chairman, of taking the gauze off the safety lamp?—Yes, certainly; I think that the man should be punished criminally.

28. Supposing that instead of doing a wilful act, it was an act which he had no idea would have contributed to any accident, quite an innocent act on his part, would you make him criminally responsible?—He should prove that it was an innocent act on his part before a jury.

29. Supposing he proves his innocence?—Then he would not be punished.

30. Would you make him civilly responsible?—No; the master would be responsible for the accident, as in a railway case.

31. Although it had been done quite unwittingly by this person, you would make the master civilly responsible?—Yes; I should the same as in the case of railway accidents.

32. Would you limit the liability of the master at all?—No; I have thought over that question, and I do not see any reason why there should be any limit placed upon the liability of an employer any more than in the case of a stranger where a jury would assess damages upon some ground of computation; it seems to me that that would be the only ground of limitation.

Mr. *Cawley.*

33. I understand you to say that when a man enters into an employment he assumes that all his fellow-workmen are competent and trustworthy; that is your position, is it not?—Yes.

34. Do you think it fair that it should be laid down as an assumption which ought to be adopted, without any statement on the part of the workman or the employer at the time of the engagement that such is the understanding?—It seems to me that it cannot be otherwise. For instance, going back again to the building trade; a man asks for a job of work on Monday morning, he is a total stranger to the firm, and a total stranger to the workmen; he might never have been in the town before, and he takes it for granted that the scaffolding, and every portion of the machinery, gear, and tackle, round and about this building, is perfectly safe and secure. He goes to work on that assumption, and it seems to me that it cannot be otherwise.

35. It might be otherwise I think, but you are asking, are you not, that the law should assume that every man ought to enter upon his employment with that understanding in his mind?—Scarcely so. That is not as I wanted to put it; it was rather this, that an employer should be held responsible for the safety of whatever it happens to be, and also for employing competent persons. He is bound to employ a foreman if he is not able to superintend it himself, and his workman has a right to assume that the employer has

Mr. *Howell.*

11 July 1876.

Mr. *Howell.*

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Mr. *Cawley*—continued.

has employed competent persons to see to this particular thing.

36. Take the case of a scaffolding: supposing that the man that was employed was a competent man, and that the scaffolding was properly put up, and supposing that, and that the workman had done something after the ropes had been tied together, which led to an accident, do you say that then the master ought to be liable for that?—Yes; in precisely the same way as he would be liable if a stranger happened to be passing underneath the scaffold, and a brick fell on his head. He would be responsible for that, and if the workman did not in any way contribute to the accident, the master it seems to me should be held liable just the same, or else there is, as it seems to me, no guarantee for the safety of the men.

37. You put it that there ought to be no difference between a workman and a stranger in the matter of the employer's liability?—None whatever.

38. That is really the ground upon which you put it?—Yes; that is really the ground upon which I put it.

39. Can you tell me whether you make any provision by way of punishing in any way or dismissing from the union men who are guilty of negligence towards their employers that has led to accidents?—I am not exactly sure whether there is any rule of that description in any union at the present moment at all. What they do is to make very considerable arrangements whereby provision can be made in case of accident, knowing how little they can obtain through the law. In some of the large unions they make very considerable provision. If you will permit me to lay them before the Committee, I have brought a few figures of the number of cases in which persons have been paid for accidents. I will take four societies, the Amalgamated Engineers, the Ironfounders, the Boilermakers, and the Amalgamated Carpenters. During eight years they paid no less than 24,117 *l.* 15 *s.* 9 *d.* for relief to the families of those who were injured. The Engineers' Society, taking 1872, 1873, 1874, and 1875, paid 6,000 *l.*, and in 25 years they have paid no less than 25,900 *l.* for accidents alone; but in addition to this they have paid for Sick Benefit, Superannuation Benefit, and Funeral Benefit a very large sum indeed; the Sick Benefit being 29,450 *l.*, the Superannuation 111,395 *l.*, and the Funeral 95,260 *l.* A considerable proportion of this, indirectly, no doubt, would be due also to accidents that have occurred.

40. The figures which you have last given do not refer, I presume, exclusively to accidents?—No, as I was saying, whilst the first refers exclusively to accidents, and those accidents are provided for in a special and direct way, the injuries to persons which entail placing them upon the sick list would be in addition to those accidents, and therefore a very considerable amount of this sum would be actually caused by accidents.

41. The result of the accidents being to impose that tax upon the societies, what I wanted to know was this: whether or not the societies take any steps as against those men who were the causes of accidents?—I am not sure that there has been found a necessity for any such rule. Having myself been connected with the building trades for a great number of years, and having been on committees for revising the rules, I have never heard that brought forward as a thing necessary to be done.

Mr. *Cawley*—continued.

42. Just follow me for a moment: I presume you do not mean to say that there was no case amongst these accidents in which the accident was caused by members of the union?—No.

43. Then that being so, I want to know whether or not the unions have taken any steps as against those people, in order to punish them for the negligence which they have committed and which has caused this loss?—No; it seems to me that the reason has rather been this, that there have been no flagrant cases in which the men have contributed to accidents, so that there has been no necessity for taking steps to punish them.

44. If, according to your proposition, the law is to assume that those men are competent and careful, do not you think that it would also be fair and consistent with that, that the unions should themselves take care that the men are so competent and careful by enforcing some penalty against them if they are not?—Certainly; it seems to me that if cases occurred in which it could be proved that a man had been so utterly careless and reckless in his conduct as to have contributed to an accident whereby his fellow workmen were injured. and that were brought before the society or the lodge, the man would be very severally reprimanded. But certainly it has never come within my experience; I think it would be rather a case for miners; I do not know whether they have had a case of that description, but speaking of my experience in connection with the building trades, I have never yet known an instance in which it has been found necessary to censure a man for neglecting his duty.

45. According to the figures which you have given, there has been a great tax upon the savings of the men by reason of the injuries to the workmen by accidents?—Yes.

46. Some of those accidents are probably occasioned by the negligence or incompetence on the part of the men employed?—Possibly that is so.

47. It is more than possible, is it not?—It is probable, I admit.

48. I ask you, if you are to assume that those men are competent and careful, and that the unions exercise control over them, whether it is not only fair but reasonable and consistent with that principle that they should exercise a control over the men if they do not fulfil their duty?—I do not exactly see how that could be done otherwise then by the method that we now adopt of payment themselves for injuries; because in any case, what we seek to establish is this, that the employer should be responsible for the safety of those placed under him, he being properly responsible in pocket for the accidents which have occurred, and it seems to me that an employer should make inquiries into disobedience on the part of his workmen, and punish those who might have contributed materially to the accident.

49. Ought he not to be aided in that by the workmen themselves?—I think they would aid him.

50. But there is no rule which calls upon them to do this?—I do not recollect any such rule.

51. Has

Mr. *Macdonald.*

51. Has a workman any right to interfere with another workman?—I think I answered that question previously when I answered the Right honourable Chairman of this Committee with reference to the possibility of a man interfering with the safety of a scaffold. It seems to me that he has no right, and that it would be impossible for him to do so. If a workman was ordered to get to work at a certain portion of the work, and before doing his work he went over the building or the machinery to see as to the safety of the premises, the foreman or the manager would at once conclude that he was either too timed or incompetent for the work, and he would send him about his business. The man's duty would be to go to work, taking it for granted that all due and reasonable care had been taken by the master or the foreman.

52. A very short time ago, if a man had attempted any of this interference, what would have been his reward for it?—I have no doubt that a very short time ago, before the alteration of the law, it would have been interfering with the freedom of trade.

53. Taking it as a broad statement, do you think that any workman has any right whatever to interfere with his fellow workmen?—No, I do not; I think that a person has no right, and would not be permitted to interfere with anything else than his own special work and department.

54. A workman enters into a contract for what purpose?—To do a certain work.

55. And when he has done that work his responsibility ceases, does it not?—Yes.

56. The question arises, I think, first, upon which we ought to be clear in respect to the master's liability. If an employer employs only five men and superintends the work himself and orders the scaffolding and orders the erections, are you aware that the law holds him responsible for any fault that there may be in those erections?—Yes, I understand that that is the law.

57. If he employs 10 men, if he orders and directs any one of those men to his injury, is he not responsible?—I understand so.

58. Why is he so?—Because he is supposed to have personally superintended the work, and given his commands personally to the men.

59. Do you see any reason why, if a person delegates that work to another, his responsibility should then cease?—No; on the contrary, as it seems to me from the very fact of employers being able to delegate the work to a manager or a foreman, thereby getting rid of the liability and responsibility, the care for the safety of the men is very often lessened.

60. Does it not occur to you that, so far from the responsibility ceasing when he delegates it to another, it ought rather to increase?—Yes, that was the purport of my last answer, that in proportion, as a master delegates his power to another, and consequently gets rid of the responsibility, there is less inducement for that care for the safety of the men than there would be in the case where the employer himself superintended the works.

61. From what cause does the responsibility arise; is it not because an employer is supposed to have a direct gain from the work which he carries on?—Certainly; I think so.

62. There is the old hackneyed case of a coachman who, in driving his coach, injures one of the public; is not the ground of the master's

Mr. *Macdonald*—continued.

responsibility or liability this: that he keeps that coach and those horses for his own interest, or for his own comfort, and that he is responsible for that which he does by another?—Yes; I am not quite sure whether I am correct in law, but I understand that in a case of that description the master is always held liable if his coachman should commit any injury either to person or property, and it seems to me that he should be held equally liable in case of employing a great number of workmen and delegating his power to a foreman or a manager.

63. That is to say, in all works which are entered upon by employers for their own particular profit, you would hold them responsible for any injury done, whether by themselves or by others?—Certainly.

64. Employers do not carry on works, do they, for benevolent purposes?—I have not heard that they do so, although I have heard of many men increasing their fortunes rapidly, although they say they have been losing money every year.

65. The principle really is that as they gain by the operation they are entitled to have the responsibility?—Yes, certainly.

66. There is a point to which I should wish to call your attention, and that is, it has been alleged that should a law be passed, as we contemplate, the workmen would become more reckless and careless; is that your opinion?—By no means. It seems to me that it is rather a strange theory to put forward that a man would contribute to his own injury. In the first place a man cannot contemplate the extent of the injury, and no amount of compensation would be sufficient to repay a man for getting an injury to himself, but that general feeling of recklessness I do not think exists anywhere. There is a tendency in Englishmen, perhaps, more than in most other people, although I cannot speak upon that subject to the same extent, perhaps, as those who have travelled very far, but there is a feeling amongst Englishmen to run any ordinary risk in their employment, but I do not look upon that as being recklessness, but simply a willingness to do their duty; they do their work whenever they are ordered, and wherever they are ordered to do it.

67. Do you think that by whomsoever uttered such a statement was a calumny upon British workmen?—I do. I have never known an instance in which any such thing has occurred. I have had no means of judging with regard to mines that which has been so often quoted, but in other departments I have never seen or heard of any instance that would lead me to the conclusion that such is the case.

68. You know, perhaps, as well as any man living, the habits of the working classes, and have taken an interest in them for the last 12 or 15 years; what has been the tendency of them in respect to accidents?—The tendency of the working men has been, no doubt, to make a greater provision than heretofore with regard to those things. I think that has occurred because the increase of machinery and the increase of speed with which everything almost is developed, and with which work is done, leads to a greater number of accidents than formerly. I feel certainly satisfied of that in looking back over the number of accidents that have occurred in engineering, and iron founding, and other establishments. It seems to me that the mere fact of those

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accidents increasing has led men to make provision whereby in case of those accidents occurring they shall not be thrown houseless and homeless upon the world, but shall receive the support of their fellow workmen, and that rather implies not more recklessness, but, I think, more care.

69. In connection with societies, do I understand you that they make provision for accidents?—Yes.

70. Do you know that that is the case with stonemasons as well?—Yes, I do.

71. Do they do so among miners as well?—Yes, they do among miners.

72. Did any such thing exist 25 years ago?—Such provision must have existed so long ago as that, because in the case that I cited it was first started as a general thing among engineers about 25 years ago; but going back, say 30 years ago, the cases were by no means common. There were instances in which some kind of provision had been made, such as amongst the iron founders, perhaps, and there might be one or two more, but they were infrequent as compared with what they are now.

73. So that so far from recklessness, and so far from improvidence being likely to increase in the habits of the working class, is it your experience that habits of providence and habits of care for themselves, and for their families, have increased during these last 25 years?—Undoubtedly, and I think they are increasing yearly. I think in proportion as the men become better educated, and in proportion as those in societies associate together, they feel a greater responsibility and take greater care. I think that in this respect, as in all other respects, the improvements that have been taking place within the last few years have been enormous.

74. You were asked by the Right Honourable Chairman as to what was "common employment"; are you aware that at the present moment common employment is held to be all that are engaged in one employment?—I am.

75. Would you regard it as a common employment at all that the person who constructed the scaffold, and the person who worked upon the scaffold, and did the work, were in common employment?—Only in that incidental sense in which I answered the Chairman previously; they are in a certain sense in common employment, so far as being employed by the same employer, and even so far as being employed upon the same works; but I do not think that it should be considered in any sense common employment in point of law, so as to render that servant not open to compensation, because he happens to be injured; because I contend that he had nothing whatever to do with the scaffold or machinery, or gear or tackle, or whatever it might happen to be by which he was injured.

76. The scaffold being completed before the bricklayer steps upon it, or the painter goes up, could the painter in any way injure the person that erected the scaffold, the working having been completed before he entered upon it?—It would be an unusual thing. Of course accidents have occurred after the scaffold has been completed in a variety of ways. For instance, a scaffold has been erected and completed. Of course it is not necessary, I presume, to go into details with regard to that portion of the scaffold which as a rule is fixed, and which goes from one part of the building to another, just as a portion of the scaffolding is finished, rising up higher and higher, until the building is complete. Where that is done, persons might be injured by loading the scaffold too much, and by throwing bricks down pell mell. I might say incidentally that there was a great outcry some few years ago (it is not so much now), as to the labourers objecting to run wheelbarrows on to the building, and so on, and it was put down to some extraordinary rule, whereby they were prohibited from running bricks on to the building in the fastest possible way. I need scarcely say that every one connected with the building operations knows very well that the hod is about the safest thing whereby bricks can be carried on to a building. They load them in such a manner that they carry them all over the building, whereas in wheeling wheelbarrows on to the scaffold there is a great amount of deflection with regard to the scaffold, and as the bricks shake there is a danger of the bricks falling off the barrow on to those walking below, consequently there was always an outcry against running bricks on to the building by a wheelbarrow.

77. You were asked if the workmen did not enter upon their employment having a knowledge of the common risk, and that they were paid consequently a larger sum of money because of the risk; have you ever heard such an opinion entertained by the workmen on that matter?—Never; I think the thing is by no means looked upon as part of the contract; the wages are fixed by quite other rules, and by quite other means than the question of risk.

78. Does not the law of supply and demand fix the wages without any question of risk at all? Yes, in so far as the question of supply and demand alone does fix the rate of wages.

79. Has the risk anything to do with the rate of wages in any sense?—I think not as a general rule; there might be instances certainly in which a man would run rather an extraordinary risk in which the question of that risk might be taken into consideration, but that would be in merely isolated cases, and it seems to me that the one question before this Committee is with regard to general employment.

80. That you look upon rather as a special contract?—Yes, as a special contract.

81. Supposing an agricultural labourer worked for 8 *s.* a week (and we heard not long ago that he was working for that) and he is engaged at a mill, and he is ordered by the employer to do certain work, whereby he loses his arm; how much of the 8 *s.* a week do you think would be for the risk?—I do not think that the question of risk would be taken into consideration at all, and I do not think it is taken into consideration either by the employer or the employed.

82. Do not you think it is an absurdity altogether?—Yes, I think it is an absurdity altogether.

83. And as such the workmen look upon it?—Yes, as such the workmen look upon it.

84. You were asked if the workmen had not a right to see to their own safety; in any occupation has the workman a right to travel from the work he is engaged upon?—No, he has not.

85. Would he not be disobeying orders if he did so?—Yes, he would be disobeying orders.

86. Would he not be placing himself in a position

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tion of breaking his contract and rendering himself liable to punishment consequent upon the broken contract?—If he did not run quite as much risk as that, as the law is at present altered, at any rate he would be running a similar risk, because if he attempted to do it he would be sent about his business immediately as not fit to be employed at all; besides, I hold there is another thing with regard to that, that as a rule a man is not competent. We will take, for instance, going back again to the building trades, a carpenter and mason, or a bricklayer, or a painter; they are not the best judges with regard to the entire safety of the scaffold upon which they go; they trust that to the scaffolder, the man who represents the employer in that particular case; he has no opportunity of knowing the precise manner in which the scaffold has been erected; he has no means of knowing as to the safety of the planks, or the poles, or put logs upon which those planks are placed, or the ropes that tie them together; he takes those things for granted, and is compelled to take them for granted; and the most that he knows with regard to the safety of the scaffold is generally by looking on the right hand and on the left, just at that particular spot where he happens to go up; he knows nothing about the general safety of the scaffold.

87. As every man is employed for the interest of the employer, and his interest alone, ought not the employer to see that competent men are employed and no other?—Yes, decidedly. I presume that you speak more particular now with regard to the person whom he puts in authority under himself.

88. No, I conclude the whole of his workmen?—The responsibility should be the same in every case, but where, as is the case now, we have very large building and other firms, the employer is not able to superintend personally those great works that he carries on; he is forced to relegate his power and authority to a foreman or a manager or an overlooker, he being responsible to the employer, and that responsibility should not cease in the event of the manager or foreman having again to relegate a certain portion of his authority to another person under himself; it seems to me that in every case the responsibility, so far as compensation is concerned, or the responsibility of the pocket should rest with the employer.

89. In short whoever acts for the employer, or whoever carries on the work for his benefit, or who are under the direction of those who are appointed by him to carry on his work, he should be responsible for the acts of such persons?—I think so.

Sir *Daniel Gooch.*

90. You stated just now that the interest was that of the master alone, and that the workmen have no interest in the building; do you think that buildings are put up simply for the benefit of the master, without the workmen having an interest in the work as well?—Of course there is a common interest; the common interest which must always subsist between the employer and the employed. What I meant when I put it in that form was rather this, that the master must be held responsible for the safety; he has a common interest in the safety of the people, but so far as the pocket is concerned, I would throw the

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responsibility upon the master; a man has always an interest in his own safety.

91. Has not a master as large an interest in the safety of his workmen and freedom from accidents as the workman himself?—I think so.

92. Has he not a large pecuniary interest in the safety of his workmen?—I think so.

93. Is not that a good reason for assuming that he would do all that he could fairly to make his work as secure as he can?—It should be, but I do not think it always is so.

94. Do you mean to say that it is common at all, that masters do negligently carry on their works in order that their workmen may sustain accidents?—No, hardly so far as that. There have been cases, I do not know whether there are so many now as there have been some few years ago, but certainly in the building trade some few years ago the recklessness with which a class of builders called "field rangers," and others, ran up suburban dwellings, and so on, was of the most gross character. The employer himself being very frequently a kind of sub-contractor, and in some instances having started with very little money, and having very little to loose, went to work with recklessness, and they were continually having accidents from insufficient scaffolding and badness of materials and a variety of things. Although it was to their interest, or ought to have been, had they been anything like fair representatives of employers generally, to see that everything was safe still, they were prepared to run the risk, and did run the risk.

95. I presume that in legislation you would not legislate for two or three individual cases of that kind; you would rather legislate for the general interest of the country than for particular cases?—Yes, certainly.

96. With regard to "common employment," you did not give us any very clear definition of what you would call common employment; would you call a man who carried bricks up a scaffold in a common employment with the bricklayer?—It is a common employment in a certain sense; but I do not think it is in any sense a common employment, or that it should be considered a common employment, so as to prevent the bricklayer receiving compensation for injury, or any other person who happened to be below the scaffold who was injured, because he happened to be employed by the same person as the one who had to carry the bricks on to the scaffolding.

97. Will you tell us what you call a common employment which would relieve the master from special penalty?—There is certainly no case which should relieve the master from that penalty except in the particular case where two or three persons have been working together, and those persons working together in a common employment have each in his own way contributed to the accident by which they were injured.

98. The bricklayer, or the man that carried the bricks, might, through negligence, injure the bricklayer?—Yes.

99. Why should the master be responsible if you suppose that he has got proper and efficient men?—Why should the bricklayer be injured?

100. Because of the negligence of both workmen?—Then they should be responsible for that.

101. How would it be in the case of a painter?—It seems to me that he can have no power over that. In that case the master would be held

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liable if an accident had occurred to a stranger passing underneath the scaffold; the passer-by, underneath the scaffold, would have had nothing to do with the accident itself, and the only difference between the two persons would be this, that the one was employed by the same master who employed the man who caused the accident, and the other was not. It seems to me that the person injured being in his employ, and although caused by a servant in the same employ, should have compensation if he was injured through no fault of his own, precisely the same as a stranger.

102. Then there is no such thing as common employment, as you put it?—Not in that sense certainly.

103. The question has been put with regard to a coachman. Supposing that a coachman, through negligence, throws down his master's horses, and the footman is pitched off and seriously injured, you would make the master responsible for the act of the coachman?—Yes.

104. Say that the housemaid leaves a pail on the staircase, and the cook falls down and breaks her leg, is the master to be held responsible for the negligence of the housemaid?—I do not see why he should not be; so long as the person has not, by his own act, contributed to the injury.

105. You said that the workman has no right to interfere with the master in conducting his business; in the case of a workman going to a master to seek for employment as you mentioned, the workman is supposed to be an efficient workman; the master has no means of ascertaining whether the man is a careful and steady man, nor of knowing the general character of the man at all from his last place?—No.

106. Are not the workmen who are engaged in the work much more able to discover in the course of a day or two whether a man is not an efficient man or a careful man?—Yes, undoubtedly.

107. Do you think that there would be such a case as a master dismissing a workman for suggesting that such-and-such a man was not safe to work with?—I think that a man who did an act of that description would run a very great risk. It is no part of a workman's duty to point out to the employer or his foreman the competency or otherwise of his fellow-workmen. He himself has only to do his own work, do his best, in order to give satisfaction. It is the duty of the foreman who puts the man on to test his ability, and if he was anything like a clever competent foreman he would very soon see it.

108. Do not you think that there are many cases in which the men do interfere very largely and very constantly with the inner control of the workman in establishments, in which they object to the foreman and object to the workmen, not from that cause so much, as from causes of a different character, because they do not belong to the union, or do not belong to something else, and they never hesitate, do they, to interfere and to represent their views to the masters at any moment?—No.

109. Do you think that the masters would be more likely to take severe action in the case of workmen, if they do that on the score of safety?—I have no doubt there might be cases of that sort.

110. Are there not such cases?—Such cases scarcely occur in the same proportion as the other, but that stands upon rather a different character. We have always held, and I may perhaps be forgiven the expression now from the brevity of the thing rather more than I might be inclined to do, but still I have always held to the principle that a man has as much right to select his fellows with whom he works, as he has to select the men with whom he shall sit in a club.

111. If the workmen find that a man is not a safe man to work with, which they have much better means of finding out than the master, it might perhaps be the means of getting rid of that man from the establishment if they informed the master of it?—I think it would be their duty in case of the man being a scaffolder, or a man who was at all responsible for the safety of their work. I was using that as an illustration where a person would be responsible for the safety, and in that case I think that it would be the duty of the workman, or any number of fellow-workmen at once to represent to the foreman that the person employed to do anything that might render unsafe the work in the building, or the machinery, or anything else of the kind, and that they would be justified in interfering, and telling him that the thing was unsafe, and that the man was not to be trusted, they would be perfectly justified in that case.

112. And it would be received by the master in a proper spirit, would it not, in 99 cases out of 100?—I have no doubt it would.

113. Therefore the men really have it in their power to communicate with the master if they are dissatisfied with their fellow-workmen on the score of safety?—Yes, as a general principle, I think it is so.

114. They have much better means than the master of finding out a workman who was not safe?—As a rule, those accidents occur so suddenly that there is scarcely any time to anticipate them.

Mr. *Knowles.*

115. You told us that you were connected with several trades, and with the building trade in particular; what department of the building trade were you connected with?—The bricklaying.

116. As regards the societies making provision in the case of accident, you have told us about several trades that have societies which make such provision; do you know of any where the employers contribute largely to those societies, and encourage the men to provide against the case of accident?—Yes; I know that there are some firms that contribute in proportion to the funds in their own particular firms. It is usually limited to the firms or the company.

117. In case the employers were held responsible for those accidents, do you suppose that they would continue those contributions?—No, I should think not.

118. Provided that they were responsible, would you liberate them from their portion of the poor rates?—Certainly not, any more than I would liberate trades unionists from the poor rate, who contribute annually or weekly or monthly to the society, whereby the poor members of that society are kept off the poor rates.

119. But they would not require to be members of the society against accidents if the employer was responsible?—But I did not understand that the poor rate was only to provide for men in case of accident; the poor rate is a very different thing.

120. The poor rate very frequently provides for

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for men in case of accident where there is no provision otherwise?—Yes, where there is no provision otherwise; but a man has to pay his proportion of the poor rate just the same as he has to his club, and the man who pays poor rate is as much entitled to receive support from the poor rate if he needs it from sickness or accident or old age, as he has a right to expect it from his club.

121. In case of accident you would not expect that he is to receive relief from the poor rate and from his employer also, would you?—No, but the master would not pay the poor rate for this special man; he pays the poor rate as a contribution to the poor of the whole community and not for this particular instance.

122. But if he is an employer of labour, of course he simply pays his rates on the works that he employs those people upon; if he is otherwise responsible for them in case of accident, ought he to pay poor rates as well?—Certainly, in the same way as a man who pays to a benefit society pays poor rates as well.

123. You think that there would be no occasion for the employés to pay to benefit societies if the master was responsible under every circumstance?—He would not be responsible in every circumstance, only in cases of accident.

124. With regard to the question which the right honourable Chairman put to you with reference to an explosion in a coal mine, supposing that in a mine the employer had done everything that he possibly could in the way of employing the best men and finding the best materials, but one of the workmen should liberate suddenly a lot of gas, and through carelessness, as the Chairman put it, by taking the gauze off his lamp, and an explosion occurs, and a great many people are killed, would you hold the employer responsible in that case?—Certainly.

125. On what ground?—On the ground that every person injured by that accident has not himself contributed to the accident, and of course being in the employ the master should not relieve himself of this responsibility. If, by any possibility an explosion of that kind, taking place under ground, should injure a person walking above ground who happened to be a stranger and not in the employ, the master would be responsible for that undoubtedly.

126. Because the stranger would not be a consenting or contracting party to it?—Neither would the party injured; if he had himself contributed to it, then I hold a very different opinion, and that he should not be capable of obtaining compensation.

127. You said that you would hold a man responsible that actually caused the explosion, and would proceed against him?—Certainly, I think he should be proceeded against and punished, unless he prove his innocence.

128. Supposing the man was killed, as generally is the case, who caused the accident, what then?—Then he has been punished already; you cannot punish a dead man. In the case of the man who has caused the accident, he has himself been rewarded for the share that he took in it, but that does not relieve the employer, as it seems to me, from paying out of his pocket for the accident caused to another.

129. In cases where you cannot ascertain, as very frequently is the case in these unfortunate accidents, which man has caused it, what would you do in that case?—Of course, so far as the person or persons who, having caused the accident, are concerned, if you cannot ascertain them, you cannot punish them; but to go back again to the same principle, I think, generally, the employer should be responsible in pocket to the men who are injured. You would not prosecute the employer criminally, unless the employer himself had contributed to the accident; then, if the employer had contributed to the accident by wilful neglect on his own part, I maintain that he should be held both criminally responsible as well as civilly responsible in damages.

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130. If such a rule as that which you have suggested became law, would there be anything to prevent an employer before he engaged a man, taking him to look at the mine, or the scaffolding, or any other thing, and asking him if he is agreeable to sign an agreement that he thoroughly understands it, and understands the risk that he is incurring, and that he is willing to work at that occupation, and take the risk upon himself?—I should not quite like to give an opinion with regard to the capacity of a man to contract himself out of the law. It seems to me a very delicate point of law which should be put to a lawyer rather than to myself; I do not think that a contract of that kind would hold good in law now, although I am not sure.

131. You assume generally that men know something about their duties and the risks that they incur, having been brought up to the trade before they begin to work at it?—Yes; there is a general sense of there being more responsibility in building operations or in mines, than in the case of a shoemaker or a tailor; that is granted, and that, no doubt, is to a certain extent taken into consideration; but what I understand to be held in law is that the employer engages that he will not lay a person open to more risk than the ordinary risk of a building or a mine.

132. It is not very probable that he would set a tailor or a shoemaker to bricklayers' work, or to mining, is it; because you could understand him not understanding either bricklaying or mining?—No, but that is scarcely the way I put it, I think. With reference to the question, what I understood was this, as to whether when a person who went to a dangerous trade, if I may so call it, he took into consideration the dangers of that employment when he undertook it, there is a kind of understanding that certain trades are more dangerous than others.

133. A collier, when he begins work, knows that it is dangerous under certain conditions, and that he is very well able to detect that danger immediately; do you suppose that any collier that has been brought up in a mine does not know that he is liable to danger?—Yes, I say he does know that he is liable to great dangers.

134. You would take that responsibility off himself then?—By no means; I do not think that the responsibility would be lessened with regard to the man who is guilty by reason of fixing a more heavy responsibility with regard to the employer. Certainly that would not be any reason for my advocating such a change in the law. My reason would rather be that there should be more care; that there should be, in fact, almost, if I may use the expression, extreme care on the part of any person employing other persons that the risks they run during the time those men are in the

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the employ, shall not be of that character that they might be caused by negligence on the part of the master himself or any of those put in authority under him.

135. You spoke of what had occurred 25 years ago, and of what had occurred some time ago in a general way, but do you suppose that at the present time there are any employers who are not aware that it is their interest to protect their men, and in doing that they are protecting their own property?—Yes, there is a general feeling of that, no doubt, and I should be very sorry to imply in any sense whatever that any number of employers would do anything at all that would be likely to involve the risk of accident to their men. I do not wish in any sense to intimate that, but what I do say is this, that not having the responsibility thrown upon their shoulders of compensation in case of accident, they are prepared to run greater risks than they ought to run with regard to the safety of the men; and that having the responsibility of pecuniary compensation thrown upon their shoulders, they are more likely to get more competent foremen and managers under them to see that the materials were good and secure, and see that everything was done for the safety of the men. I do not wish it to be thought for one moment that I implied that there was wilful carelessness on the part of the employers.

136. When all that is done, and he has procured the best foremen, and the best workmen, and the best of everything that you describe, you would still hold the employer liable for any damage that might arise?—Precisely in the same way as I would a railway company for an accident to a passenger, and precisely as I would an employer for an accident that occurred to a stranger and not one in his employ.

137. But the workmen are consenting parties, working for wages, whereas a stranger is no consenting party, and has nothing to do with it, still you put him in the same category?—Precisely, unless the person injured had in any way been contributing to his own injury.

138. In the very numerous accidents that are occurring, and must necessarily occur in the different trades of the country, have you ever considered how you would assess compensation, or how we could avoid a perpetual state of litigation if your principle were adopted?—No, I cannot say that I have given that question sufficient consideration to be able to answer it here. It seems to me that a jury would know how to assess damages in that case, just the same as they would in the case of a railway accident. In the case of a railway accident, I do not know whether I am going too far in mentioning what perhaps might be considered as a sort of law or rule, but I have generally found from reading the accounts in the newspapers that when accidents become rather frequent, the juries seem to feel that they must take the responsibility upon their shoulders of making the compensation higher as a deterrent upon the railway companies.

139. You have told us of many thousand accidents occurring in the different trades you have mentioned that are by no means the most numerous trades in the country; provided that the others that you have not told us of were added to those, and had to be assessed by juries, have you considered the immense amount of work

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that would have to be done if every case had t go before a jury?—No, I do not think that ther would be such an immense increase; I rathe fancy (that is my hope at any rate) that if a Bil of this kind was carried through Parliament, th number of accidents would be considerabl lessened. I think the care taken, especially i those dangerous trades, would be such that ac cidents would be rather infrequent than otherwise

140. You have just told us that you though all the care was taken that could be taken t employ the best managers and the best materials and the best of everything, but still accidents d occur?—No, I beg your pardon, I did not inten to say that; what I intended saying was that should be very sorry to impute to the master their doing anything wilfully that would con tribute to those accidents to their men. In fac it is rather that the master is disposed to leave i to the manager, and he thinks that if he pays fo those persons he will have no accident, and he takes the risk of the foreman, and accepts th responsibility that no wilful accidents occur. never contemplated his accepting any other re sponsibility. What I wish to be exact upon i that I do not wish to impute any wilfulness o the part of the employers.

141. Take an employer who provides in efficient or defective materials, and says that wil do, say for to-morrow, or another week, is h not responsible if an accident does occur at th present time?—I have seen it stated, as a rule o law, that he is responsible. The honourabl Member asks me about knowingly providing bad materials for the work; I understand that it ha been ruled in that instance that that is so; bu the most curious thing is with regard to that, tha the question of "knowingly" is so variously in terpreted. It seems to me that knowingly in case of that kind should be synonymous wit negligently.

142. I do not put my question as to whethe it was knowingly done; you answered my pre vious question by saying that a master was in th habit of occasionally saying, "Oh, that is bad material, it will do for another day, or for anothe week," and putting it off in that way; and I ask you, provided they did put it off in that way and neglected to provide better materials, or anything else, are they not now responsible?—I under stand the rule of law (of course I have no opportunity of judging, only from what I have seen) is that, if he has knowingly done it, he i responsible. I was only speaking with regard to the ruling in court. I was not attributing the word "knowingly" to the honourable Member but as I understand the rule of court, it is whether he has "knowingly" contributed to it in any kind of way; I say "knowingly," in that sense it seems to me should be equivalent to "negligently," because he may not knowingly do it by himself, he having employed a foreman or manager, or overlooker.

143. Supposing that if a workman considered the scaffold to be badly erected, or anything else, and reported it to the foreman, and the foreman said, it will do another week, or day, do not you think he would get compensation?—I think it is very doubtful whether he would get compensation; I do not know a case. I have heard that a case has occurred a very few years ago but it certainly was not carried to the higher courts.

144. You

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144. You know what is occurring at the present time; do not go back so often to grievances of 25 years ago?—It is not so long ago as that; but questions with regard to compensation have not altered, and if they have altered at all they have altered to the disadvantage of the workmen, because, as I understand, the rules that have been laid down against the workmen have been only of very recent growth indeed. I refer to this as it is only a few years ago; it is not necessary to mention the name of the firm, but there were a couple of houses which had to be entirely renovated, and they determined to take out the fronts and backs of those houses; in fact, to place the whole of those two large houses upon struts, to strut them up floor upon floor. When that was done it was found that the foundations of the party walls themselves were not sufficiently secure, and they determined to undermine it, leaving it upon struts; the struts in the first instance being supposed to be sufficient, provided the party walls themselves were secure, to allow new fronts and backs to be put in. Suddenly one morning the two houses fell. I happened to be near at the time of the accident; there was scarcely a brick fell the moment after the first crash came. In this instance it was not certainly carried to the higher courts, but one poor man who was at work there had his ribs broken, and so on. He was paid some three or four days to the end of that week; he tried to get compensation; he went to some court, I forget which court it was, and the case was decided against him. He had spoken to the foreman previously, when he was ordered to go down there to underpin those party walls; he said, "If I do, I am running great risk, because those struts were put up when they supposed that the party walls were secure." "Oh, never mind, they are safe enough," was the reply, and he did it. In the first court that he took it to, I forget which it was now, the case was simply dismissed. If he were a rich man possibly he could have carried it to a higher court. I am not prepared to say whether a higher court might not have given compensation in a case of that kind. But knowing something of the decisions of recent years I do not think he would have got it then.

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145. I understand you approve of the Bill of the honourable Member for Stafford entirely?—Yes, in the general principle I do.

146. Do you think, then, that common employment should be no defence to the employer?—Precisely so.

147. Do you draw any distinction with regard to common employment between the subject-matter specially referred to this Committee; I mean the consequences of the neglect of overlookers and foremen, and the consequences of the neglect of fellow workmen strictly so called?—No, I make no distinction between them.

148. You think that there should be no distinction between them?—Yes; that there should be no distinction between them.

149. You would not recognise that workmen working together, we will say in a mine, have frequently better means of detecting and preventing danger than the most skilful overlooker could have?—No doubt.

150. Do not you think that that would entitle the master to some reasonable immunity against



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injury to the workmen in that way?—Scarcely, I think to immunity. What I do think might be done, and what I think possibly would occur if such a measure were carried, is this. I do not think that in that case there should be immunity to the employer; but I do think that in such a case, supposing a measure of this kind to be carried, the employer would make it to the interest of the workman to make known to him, either personally himself or through his foreman or manager, that there was danger of explosion or accident, and that, therefore, greater care would be taken, and I think that that would tend to lessen the number of accidents.

151. I will put this question to you; one of the great dangers in mining is the falling of the roof, which to a great extent is made tolerably safe if it is propped up with proper appliances. Assuming a gang of four working together in a mine with adequate timbering and every machinery provided by the master, but through laziness on the part of two or three of the men the roof falls in and kills or injures the active man of the same gang, you will admit, I suppose, that the active man who knew the method of roofing would have been able to have required his fellow workmen to do it in a proper way; do not you conceive that in that case, with regard to an accident of that kind, it would be very hard upon the master if he were responsible for not preventing the negligence of the fellow-workmen?—It is rather difficult for me to speak with regard to miners; I would rather that that should be left to those who understand mining. In that particular case of those who are sent to do the roofing of the mine, I am disposed to think that those accidents are preventible to a far greater extent than is often supposed; at any rate that the men whose duty it is to see to the shoring of that mine may be held responsible to the master for any neglect of duty that they might have been guilty of, and that might have contributed to an accident whereby the others were injured; but I do not see in any way that the neglect of those men to do a certain portion of the work should debar the other men who were not contributing to the accident at all from being compensated when injured through the accident.

152. If their neglect amounted to contributory negligence, you would then concede that they would not be entitled to recover?—Certainly.

153. Anything short of that, you think they would have a fair claim?—Yes.

154. I understand that you base your argument upon this, that you see no well-grounded reason for treating a sufferer differently, because he is in common employment, from the treatment that he would receive if he were a stranger?—None whatever.

155. Are you quite satisfied with the justice of the present law which imposes upon the master the liability for injury arising from the unauthorised act of his own servant; have you ever considered that subject?—I am afraid that I have not taken quite the sense of the question.

156. You complain about the existing exceptions as existing in our law; have you ever considered the justice or the expediency of the present general rule of law, which makes a master responsible for the unauthorised act of his own servant?—Scarcely; but it seems to me that that does not alter the position at all if the

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act was unauthorised. Of course the master is responsible.

157. I was wanting to see whether you had applied your mind to the general law of which you complain, of masters and workmen forming an exception; do you think it is a just law which makes a railway company, or an individual standing in the position of a railway company, responsible to a stranger for the neglect of a servant, which is not only not authorised but forbidden?—Undoubtedly I do.

158. On what ground do you consider that the justice of that law is based?—It seems to me that when a person, taking the case of a railway company, undertakes to convey another, whether it be a company or a single person, from one point to another for a sum of money, it is generally understood that there should be a safe conveyance.

159. That is a different point; what I am speaking of is injury; you put it just now, I think, upon the profit which was expected to be derived from the work done?—I put it on a broader ground than that.

160. What is the broader ground?—The question was put in that form by the honourable Member for Stafford, but I put it altogether upon a broader ground. It does not matter, as it seems to me, upon what ground one man might employ another man, whether for his profit, or for his pleasure, or whatever ground it might happen to be; if he employ him for that sort of thing, he, as the employer, must accept the responsibility of what is done by that person whom he so employs.

161. May I take it that you consider the employé the agent for the employer?—Yes.

162. Is he an agent beyond the scope of the agency which he is entrusted with?—Not in a certain sense, but yet in a sense he is, if he has by his act contributed to the injury of another. If he has injured himself by that agency, he must accept the responsibility if he has contributed to it.

163. Then you think the mere fact of employing a workman, is to make the employer liable for all that the employé does?—Whilst he is in his employ.

164. Whether he is within his orders or not?—Whether it is within his orders or not; it should be the foreman's place or the master's place to see that he keeps within it.

165. You quite acquiesce in the natural justice of the law which imposes that liability arising from the simple fact of employment?—I do.

166. Supposing you had two men working together as partners in the same job, at equal risk and equal profit, do you think that if one of them was injured in the course of that employment, the other partner should be responsible to him?—It seems to me that that will stand upon rather a different ground; they would both accept the risk and the responsibility; they would be partners.

167. Would the suffering partner have a claim, according to your view of natural justice, upon the partner who escaped the injury?—I think it is rather difficult to answer a question like that, because so much would depend upon the exact circumstances of the contract.

168. I gave you a simple question, perhaps you do not like to answer it?—I would, if I could see my way clear; but it seems to me that the contract itself should depend to a very great extent, and would depend, upon the law whether one partner was held responsible for another.

169. I mean as between themselves I was wanting to analyse the conception upon which you are satisfied with the very heavy weight of responsibility upon the employer?—It seems to me in this particular case that it is entirely different from an ordinary employment.

170. I will put another uncommon case; supposing that in a mine the butty-man, as they call him, in fact, the sub-contractor, employs four or five men under him who contract to bring him so many tons at so much a ton, and that the owner has provided every appliance which science and skill can suggest, but an accident happens to one of the gang by the neglect of the others, upon whom would you throw the responsibility of that accident; upon the mine-owner or upon the butty-man?—That is to say, an accident occurs to another similarly placed to the butty-man in his position as sub-contractor.

171. No; I assume that the mine-owner employs the butty-man to bring out a certain number of tons of coal, and that butty-man in his turn employs five or six workmen to do it, that an accident happens to one of the workmen in similar circumstances through the negligence of another; on whom would you throw the responsibility?—On the coal-owner.

172. Would you tell us why, because there is no contract entered into between him and the man who was injured?—On precisely the same ground that it is thrown in other cases with regard to sub-contractors in the case of wages which has been decided in the courts of law over and over again. But on another ground I would take it, and to my mind a ground that should have still more weight with this Committee, that if there is anything in this country that has contributed more than another to our numerous accidents, it is this system of sub-letting by which needy men or avaricious men have undertaken to do a given work, driving the other men under them. Those men run greater risk than any other class of men in this country. Where the most numerous risks occur it seems to me are always where those sub-lettings or sub-contracts exist.

173. You think that sub-contracting is so pernicious a thing, that you would prevent it even at the risk of additional penalties?—Perhaps it would be hard to prevent it; but at any rate I would make it distinctly known to the employer that if he contracts his work he is to be held primarily liable for what occurs.

174. In other words, you would make the butty-man his agent for the purpose of entering into a sub-contract?—Yes; that is not a new point of law now, because it is held so in the case of wages.

175. Just a word or two about dangerous employment; I understood you in reply to the honourable Member for Stafford, rather to ridicule the notion of there being no special rate for risky employment at all; have you ever known a case of risky employment?—Not in a general sense at all; I have known a single isolated instance such as an honourable Member of the Committee put, but which would never be taken into account in passing a measure of law; such, for instance, as a man being asked to go down in a diving-bell, or into water for a specific purpose there and then, but not in the case of general employment.

I have

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I have never known such a thing taken into consideration; I cannot call to mind any instance that would justify my taking that view.

176. Take a similar case, not that of a diving-bell, but of a man who is employed in what is known as pneumatic machinery to excavate in sinking a coal-shaft through a mixture of mud and water. That man was receiving very special wages, something very considerable indeed; but being a delicate man he was unable to live in the dusty air, and died from heart-disease; taking that case, do you think that an employer should be held liable to compensate that man, or that man's family, for the lamentable accident of his death?—No, I should not.

177. That case you would except?—Yes.

178. Therefore you would allow in certain cases the element of dangerous service?—Yes.

179. In exceptional cases you would allow the exception of dangerous service?—Yes, if it was a matter as between the person employed and the person employing, which formed part of the contract.

180. Then your proposal to exclude dangerous services from the category of defences available for a master, is based upen the infrequency of the contract, it being in fact based upon that consideration?—Yes, so much so that I think I said before I have not known them to exist.

181. If you were satisfied that such instances as I have mentioned were less uncommon, you would open the immunity to let them in?—I think there may be cases in which that immunity should exist.

182. In the case of a workman not having a right to interfere, are you not using that rather in a popular sense; that is you would say he would not like to interfere, or it would be awkward or difficult for him, but not that he had no legal right to interfere; you do not understand that?—No, not in the sense that we understand legal rights, certainly not.

183. Therefore it comes to this, that if a man prefers risking his life or his limbs, to incur such odium with his master and his fellow workmen that may be entailed by his making a complaint, he has no legal means of avoiding the injury?—I have no doubt that he may have a legal right; and he has that now, but it is almost nil when you extend that right to the possibility of putting it into operation. If a man attempted, when he went to work in the morning, to go where he had no right to go, to see that the machinery was all secure, the foremen would ask him what he knew about machinery. "I am responsible for it; what right have you here; this is another man's department?"

184. Surely that is a question of degree, is it not; take an extreme case again referring to mines, that of a workman going to his work in the morning and seeing that a strand of the winding rope has parted; do you conceive it possible that the fear of being told to mind his own business, for that is what it comes to, would prevent any created being from calling the overlooker's attention that the strand had parted, and that the rope was dangerous?—No, I think that in a case of that kind the man would very naturally go to the overlooker; but that is a case which comes absolutely under the observation of the man himself, and must come under his observation when going down the shaft. In a case of that nature, I do not think the overlooker would



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discharge a man for doing so, but it is very doubtful if he persisted in saying that there was danger, and the danger might occur at anytime, whether the foreman if he were able to discharge at a moment's notice would not say, "Oh, well, you had better take your money and go."

185. Might not it be simply a question of the personal demeanour of the workman in each particular case; did you ever know a case in your own experience of a workman actually risking his life or limb rather than complain where he has cause to know that a dangerous scaffold is under construction?—No, I did not intend putting it on that ground, but on another ground, that of the impossibility of any man being able to see the danger by which he himself is surrounded, and that he had nothing to do with that which caused the danger. It depends upon the person. The foreman is not always the person likely to be injured, and is not always the most competent man to know by what means these accidents might occur, it being in some other person's province to determine the safety and security of the mine.

186. I want to see upon what ground you put it that the men had no right to interfere; you may take a class of cases in which an employer employs a man, I mean a superior engineer or a man who laid out all the work, a workman who would have nothing to do individually with the workmen who carried it out, but I want you to apply your mind to those cases in which one word of a fellow workman who we will suppose is about to be injured, if he had the pluck to say it, would save them from disaster; do not you think that the abstaining from saying that word, and from making that complaint, under circumstances which would reasonably suggest the complaint, ought to put the master who suffered from it in a different position to other cases where the workman could know nothing about it?—I think, perhaps, I might go so far as this, to allow that there was some mitigation in the circumstances, and that the amount of compensation might somewhat be lessened when those circumstances were taken into consideration; but I do not think it is sufficient, by any means, to take the responsibility from the employer; I think that his responsibility exists precisely the same. It is a part of his duty to see that the place is safe for his workmen.

187. I remember a case of actual practice of a miner having in breach of the law, for which he was punishable, and in neglect of the most obvious precautions, sent his boring iron too far ahead of him, and thereby tapped old workings that lay close to the pit in which they were working, and that man, instead of giving the alarm, put his hands into his pocket, lit his pipe, went to the mouth of the shaft, and said nothing; do you consider in that case that the mine-owner should have been, according to natural justice, responsible for the disaster which ensued?—In that case I still think that the responsibility, so far as compensation is concerned, should fall upon the shoulders of the mine-owner who employed that man, but I think, at the same time, that the law should be able to catch hold of the man who would do so dastardly an act, and punish him most severely.

488. You will admit, with me, that the mine-owner can in no case be supposed to have



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authorised him either to drive in too far, or not to communicate with the proper authorities, when he had done so?—Quite so.

189. Although this was a gross violation of duty on the part of the man, you still think that the employer was liable?—Yes; because the men who went into the mine had nothing to do with the sub-contractor or the particular person who caused the accident; they went into it with a general feeling of reliance upon the safety provided by the employer himself.

190. You would not consider that sort of risk was fairly within dangerous risks; say, that workmen A., B., and C., may have a fellow workman D., who would do such a thing as I have mentioned, that does not bring it within what you would consider dangerous risks?—Not in the sense in which the law is applied.

191. Did you ever, in your experience, hear of any working man complaining either to his employer or to the magistrate of neglect of duty by other working men?—I do not know that I have. I do not recollect a case that I could cite in which neglect has been alleged. I have seen it stated in newspapers that such things have occurred in mines.

192. Have you ever heard of the prosecution by any society of workmen for the neglect of obvious precautions?—I think there have been cases in law, but I do not know of any particular cases that have come under my own observation.

193. Upon this question of the rate of wages, have you considered this: If employers were rendered liable in the wider sense proposed in this Bill, do you think that the wages would remain the same as they are, all the circumstances being the same; do not you think that a per-centage would be taken off the working men's wages to cover the increased risk which the employers must necessarily submit to?—I think that might be attempted, but I think the men would resist it. I do not think that that should be any reason why there should be a per-centage taken off.

194. You tell us now that in four trades the compensation in a certain number of years has been a very considerable sum of money. I imagine that those four cover a very infinitesimal proportion of the trades in this country?—Yes.

195. Do not you think that if you were to apply those figures to all the trades, the tax upon masters from such a law would be something enormous?—I have no doubt that there would be a large tax comparatively to what there has been under existing rulings. But, at the same time, I think that they would decrease in proportion as the responsibility was thrown upon the shoulders of the employer, but I do not think it would be appreciable enough to affect the wages in any particular industry.

196. As a practical man, you think that even in risky trades like mining and the like, it would not cause any substantial or appreciable difference in the rate of wages?—I do not, taking into consideration the number of accidents and the great number of men employed.

197. Did I rightly understand you to concede that in one sense a provident workman would be relieved from the burthen which he now submits to in contributing to the accident fund?—Scarcely so; I think that they would still be cheerfully and voluntarily taxed when some accident occurred, just the same as now they have undertaken that responsibility where they could gain no compensation elsewhere; I think it would be still continued, but I think those two circumstances combined would tend to render those accidents less frequent than they are now. I think the mere fact of the contributions, and so on, being provided by working men's societies does not tend to develope the rate of increase of those accidents, but they tend rather to lower them; and I think that it would have precisely the same influence if compensation were obtainable.

198. Then do you suggest that a workman belonging to one of those societies who contributes to a fund would, on an accident happening, get not only the legal compensation payable by his employer, but his share from the club or benefit society?—He would, undoubtedly, if it came within the rules under which the accident occurred.

199. You think that probably although the master was liable, and there was no legal necessity for this fund which is now created, the fund would still be created as an additional compensation or alleviation in the event of accident?—No, it would rather operate in this way, that instead of spending some 25,000 *l.* in so many years, or whatever the figures were which I quoted, their contribution would go rather to increase the allowance in other directions; for instance, it has been alleged that the engineers are not perfectly secure and safe and sound upon the principle of superannuation; they would give this 25,000 *l.* to the superannuation fund.

200. Do you not see in the case which I am putting to you, that if the compensation fund for accidents is provided by the masters, it no longer becomes necessary for the men to provide for it, and the fund would otherwise go to provide a superannuation or some other beneficent object?—Yes; the fund that is contributed is not divided into parcels, so much for accident and so much for sickness, but it is so much per week to cover certain risks, and if those risks were not incurred in one direction, there would be a larger sum of money to meet the risks incurred in other directions.

201. Do not you think that in the long run it will come to this: that there is a certain per-centage of accident which has to be covered; and if you change the liability you would alter the aggregate relation of wages to profits, and so forth, so that it would be substantially out of one pocket into the other?—It might or might not, but one does not quite know where those laws lead him. I know that there have been strange computations made with regard to certain things of that kind, but I never could quite make out that there is any invariable law, whereby a given number of accidents occur this year and must occur next year, and will inevitably occur every year during the next 10 or 20 or 30 years; I am not prepared to say that I think that would occur, but at the same time I think, as a means of providing against those accidents, the more responsibility you throw on the employer, and through him upon the manager and foreman, the less likely are we to have those serious accidents occur.

202. To do that, I may take it that you seriously believe that the present expenditure through accidents might be diminished, if the masters were made personally responsible?—Certainly.

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Certainly. I honestly believe that they would be decreased immensely.

203. I think I understood you to say that you do not believe that any alteration in the law will have the slightest effect upon the workmen themselves, in their conduct or their demeanour?—I did not say so.

204. I understood you to say that you did not think it would make them more careful?—Not more careless, I said.

205. Therefore, you do not think that if there was any alteration in the law it would have any effect?—I would go rather further than that. It is a kind of law of progression, that we all feel. I think that an increased responsibility on the part of the master and the foreman, and those who represent him, really increases the sense of responsibility on the part of the men.

206. You have told us that you think that an alteration of the law, would produce an immense diminution in the number of accidents?—Yes.

207. And you have told us that, in your judgment, if the men were entitled to compensation from their masters, they would not become less careful than they are at present?—Yes.

208. It results, therefore, that you throw in that way the blame of all the existing per-centage of accidents upon the employers; is not that the inevitable conclusion?—Scarcely so; not in that broad sense. What I mean to put is this: that the fact of there being no pecuniary responsibility upon the part of the employer, there is greater risk, if I may use the expression, upon the part of the foreman and overlooker representing the master. The workmen accept that responsibility in a certain sense. I use the word acceptance now in a certain sense, that the work goes on and accidents occur that are not contemplated either by the one party or the other; but I do think that what would occur is this: that in proportion as you increase the responsibility on the part of the master, by himself personally and by those under him, that a sense of responsibility is communicated as it were to the men in proportion as that sense of responsibility is felt by the employers; that is my experience, and I have had a good deal of experience with men, that the sense of responsibility is increased on the part of the men themselves.

209. In one word, it would go down from the higher works to the lower, and as the lower ranks felt that they were more cared for, and that there was more provision made for them, they would cease to be careless and become more careful; is that your way of putting it?—That does not seem to me always to be borne out by facts, but still I think every one acquainted with the facts will say this: it is supposed by some that in proportion as a trade society becomes rich, so in proportion would strikes become numerous; but it is a fact well known to all those that are acquainted with those organisations that precisely in proportion as a society becomes rich in its funds, there is a disposition for strikes to diminish in number.

210. You think that strikes bear a certain relation, not very well defined, to carelessness in carrying out work?—No, that was not my object; it was to show that the sense of responsibility and power acts and re-acts upon one another.

211. Do not you see that the workmen who accumulate those funds are of the provident and better class, whereas the workmen who let roofs



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tumble down, and do those careless things, are the improvident and worse men; do not you think, therefore, that the analogy fails?—Not at all. The only thing is, that the moral pressure or power upon them, would be less and less by degrees, in proportion as those men were less provident and more ignorant; that is all. It would act upon them in precisely the same way.

212. Have you ever worked out in figures what, in your judgment, would result from the alteration of the law?—No; but I have thought of this view of the case, and I think it is a very reasonable one, that instead of the whole of the money that has been paid, or supposed to be paid, in compensation by the employers and the workmen in cases of accident, increasing so enormously as I think you imagined when you put the question to me; instead of influencing the current rate of wages, the risks would be lessened in proportion as the responsibility was increased; and the masters themselves would find it in the long run (in fact some employers find it so now) to be to their interest to take the greatest possible precaution to prevent all kinds of accidents; and therefore they would recoup themselves more or less when those accidents in reality did occur.

213. Would you not allow of some immunity to the employer as resulting from inevitable accident?—I do not see my way clear to admit that, further than the fact that a man having contributed to the accident himself personally should be held responsible. I go back to the original ground that, if a man who is injured happens to be the fellow-labourer of another man, but has not contributed to or caused that accident, that should be no bar to compensation on his part, or on the part of his family in case of his death.

214. You would not recognise inevitable accident as freeing the master from responsibility under any circumstances?—Not in any sense whatever, only as a matter to be computed, perhaps when compensation was allowed.

215. As a little diminution in the damages, but nothing else?—That is all.

Mr. *W. Stanhope.*

216. You have answered some questions with respect to workmen having a right to complain of machinery and other appliances not being quite right. Now with respect to a workman interfering with another workman who is doing his duty carelessly so as to endanger his fellow workman's life, do you consider that he has no right to interfere?—No; if you take it in that broad sense he would have a right to interfere, but he would only have the right of interference in a very general sense, he could not control the other. He might complain of a fellow-workman, undoubtedly, as one workman would complain to another, if he saw that that other workman was doing anything likely to contribute to an accident either affecting the man himself or likely to cause injury to another person who is employed with him; but beyond that, he would have no power of speaking so as to have any influence or control over the causes of accident.

217. I understand you to deprecate a workman intefering with the way in which another workman does his work?—I say that that would not be permitted, and it is not generally permitted.

218. And you think it not desirable that that should be done?—No, I do not think it is; I think

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I think it desirable and necessary in large establishments to have such a power of interference, either by the employer's representative or foreman.

219. Do not workmen continually interfere with each other in the mode of working, which interference is carried on through the agency of the unions?—I do not think so.

220. Have you ever heard of instances of bricklayers not being allowed to use both hands in their work?—I have heard of that very frequently, and if you will forgive me for saying so, I consider that a more stupid or absurd thing I never heard in my life. I hope I am not using a word that is disrespectful; I am not applying it to the question of the honourable Member.

221. Do you mean to say that there is no truth in it?—No, certainly not; the thing in itself is absurd. A man cannot use the trowel in his right hand, and be picking up a brick with his right hand at the same time; it is impossible.

222. You never heard of workmen not being allowed to do beyond a certain amount of work when they could do more, or to earn a certain amount of money when they could earn more in a day?—I have seen that stated in the newspapers, but I know that the very contrary exists in every trade society that I know of.

223. Or that a man is kept back from doing his best because he could do more than an inferior workman in the same trade?—That depends entirely upon the way in which it is put. There have been occasions in which some kind of colour might have been given to a statement of that kind, but it is simply on this ground, and I think a very fair ground; it is this, it was the case many years ago more than it is now, for the thing I am happy to say has very nearly, if not quite died out; it was the habit for some of those field rangers to employ a runner at 6 *d.* per day extra, whose duty was to stand at the coign, and continually to be forcing up the line, and they sometimes would nearly blind another man by pulling the line and making it spring with the mortar into a man's eyes and so on, in order to get him to keep running up the line and doing the work in proportion to this man who was paid 6 *d.* extra for it; I hold that to be wrong in principle; for if a man is paid 6 *d.* per day extra at the two corners, the other men on any other portion of that line except at the two corners should be also paid the 6 *d.* extra if they are expected to do as much work as the runners, for it is not fair for the runners to get extra unless they do more work.

224. You think that the occasions of interference with the mode and with the quality and quantity of work done among the workmen by each other are very rare?—Very rare indeed.

225. Your argument goes very much upon the quality of the workmen that the master employs, do you think that if a master chooses to select his workmen, and to bring them from one place where he thinks them to be good workmen, he would not find difficulty in making those workmen work together, and would not be interfered with or receive orders from the union nor any other body as to whom he was to employ or not to employ?—There have been circumstances, no doubt, but each case will have to stand upon its own merits, in which workmen have sought to interfere with certain arrangements being made

Mr. *W. Stanhope*—continued.

of that description, but each one would have to be explained upon its own basis, because the difference is very wide; but a general interference I deny.

226. Supposing it to be the case that a master is not allowed to employ such workmen as he considers competent and the best workmen, and that he is obliged by the union to employ workmen whom he does not approve of, you think that still he ought to be liable for injuries which may have been caused by those incompetent workmen?—I do not think that the case occurs; I do not know of any cases which could legitimately be considered as occurring in the way that you have put it, in which a master is dictated to and told that he shall employ one class of men and not employ another class; I doubt whether that would be the very best possible way of getting workmen to work with a certain class of workmen that are placed by their side. I think again that a man has as much right to choose his companions in the workshop as he has in his club.

227. A man has, of course, a natural right to choose his companions, but still you would make the master liable for what those companions may choose to do?—So long as they are in his employ, and they are contributing to the injury of others, yes.

228. I want to know how much liberty you would allow on both hands; if the master has to incur that liability, what liberty is he to be allowed with respect to those incompetent workmen on the other side?—But his liberty and his responsibility would be co-existent both together.

229. In one case which was put to you just now of the mine where the man had bored through into some old workings, do you consider that the other workmen ought to have informed upon him if they saw him doing that?—As I understood from the gentleman who put the question, it would have been impossible, for the man was boring and he knew what he was doing at the time of the boring, but the other workmen who were injured did not, and he simply walked away to another part of the mine and left them to suffer.

230. Supposing a man brings an open barrel of powder and sticks his candle, with a bit of clay, upon the head of it, do you think that another workman ought to go and inform against him in that case?—Clearly.

231. I have known of cases where such things have happened in my own knowledge; do you think that in the miner's case which is not quite so gross a case as that which endangers the lives of all concerned, that it is the practice of workmen to inform and to assist in producing safety in that way?—Certainly.

232. Do you know of any case where a union have had any arrangements whereby they have detected or brought to justice those who have endangered their fellow workmen's lives?—No. I stated in answer to a question by another Member of the Committee that I do not know; I do not deny but what there might have been such cases, but I think that they would exist, perhaps, in what are called the Sheffield trades or small trades of that kind; I do not know how far it might be the case with miners, but in a general sense it would not be applicable; such things do not occur and therefore they are never called in question, and are never likely to crop up.

Mr. *W. Stanhope*—continued.

233. In fact, it is the general business of the workmen to protect each other from injury, but where injuries do occur, in your opinion, it is the business of the master to protect his employés by undertaking the whole responsibility of pecuniary compensation?—That is not my opinion by any means; I say that it is the duty of every man to protect himself and others as far as possible, but what I tried to place before the Committee was the impossibility, practically, of carrying out that responsibility, and therefore you must fix the responsibility upon some one. I think that any man who saw anything occurring which was likely to be the cause of accident to another man should himself make it known, and should warn the person likely to be injured, or should warn the employer or the foreman, I think, undoubtedly.

234. You have told us that you thought that by further liability being fixed upon the employer a very large proportion of those accidents could be obviated?—Yes, I do think so.

235. Is it not the case that anything which can be bought with the master's money, any improvement of any kind which comes to the knowledge of the workmen generally, or in their union, which could be bought by the expenditure of the master's money, is invariably enforced upon him and carried into execution; for instance, supposing there was an improved kind of scaffolding, very much more safe than the old, do not you think that the union would make it obligatory on the master to adopt that improvement?—I think that would be impossible. I think that the unions are supposed to interfere too widely at present with the employers, and if they attempted to impose conditions of that kind, I think they would become more disreputable than they are now in certain quarters. But I do think this, and I would venture to express this opinion, that there may have been instances in which men have been foolish enough to resist improvements on the part of the masters, that might have contributed to the further safety of the men; that has been done, but it is not so likely to be done at the present time as it has been done in the past; their ignorance of the appliances of machinery was such, that I think that that might have occurred.

236. To put it in another way; supposing this disinclination to adopt improvements is dying away, and that the masters are willing to adopt any improvements that can be made, is there not on the other hand a greater responsibility thrown on the men that they should protect themselves by giving warning of any neglect of duty, or of any inefficient work being done amongst themselves?—I do. I think that that would take place. In answer to the honourable Member sitting next to you, I strongly supported that view just now; but I do not think it would be impossible. I think it might be rather dangerous, perhaps, to insist that those kind of things and all those other things, should be undertaken by the union or the unions. I think that the sense of responsibility would increase on the part of the men, and that they would aid their master in preventing accidents.

237. Supposing any action were undertaken by the union to bring those men to book who violated strict rules, and in that way put the whole of their fellow-workmen in danger, that would have a vast deal greater effect, would it not, in diminishing the number of accidents than any pecuniary liability which could be thrown upon the master?—I do not know that it would, but, at the same time, if I may venture to express an opinion, I may say that I do not think there would be any feeling of repugnance to that being done on the part of any respectable union that we have in this country. I think, on the contrary, that if they thought it would contribute to the greater safety of the men, and would lessen the risk and responsibility of the master, they would do it with very great pleasure, because the men in such unions as the honourable Member referred to just now are, I believe, the best and picked men, and they would recognise fully that in proportion as risk is incurred by the master so risk is incurred by themselves, and they would do their best to prevent both.

Mr. *W. Stanhope*—continued.

Mr. *Howell.*

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238. You cannot give us any instance where such a course has been taken by the men?—I cannot. I do not think that they have ever seen any necessity for doing so.

Mr *Shaw Lefevre.*

239. I understand that you put forward two propositions; first, that the employer should be responsible to his men for the general efficiency of the plant and machinery: and, secondly, that the doctrine of common employment should be done away with, and the master be held responsible for the negligence of his servants, subject, of course, to the question of contributory negligence?—Yes.

240. With regard to the first of those points, are you aware that if you can bring home personal knowledge or personal intervention to the employer you can make him responsible to his servants for the non-efficiency of the plant and machinery?—No. In the case of bad material the word "knowingly," it seems to me, has had too wide a meaning or too narrow a meaning; the one or the other. "Knowingly," in that case, seems to be construed, so far as I can understand it, and I am on rather delicate ground upon the construction of the meaning of the law, as to whether it has come to the personal knowledge of the employer.

241. If you can show personal intervention on his part, then you can hold him responsible; if, for instance, the employer is the person himself who erected the scaffolding, and an accident occurs from an inefficient scaffold, then you hold him responsible?—Yes.

242. But if he has done it through an agent you cannot hold him responsible?—Yes, and I want to know why I should not.

243. As the law now stands, it is in favour of the large employers of labour as against the small employers of labour, and still more is it in favour of companies who can only superintend through an agent?—Quite so.

244. I understand you to propose to apply the same rule to large employers as well as small ones?—Yes.

245. You would make an employer responsible, though he does the work through an agent?—Yes.

246. Are you aware of what has beendone lately in regard to shipping. That under the Merchant Shipping Act of last year, a shipowner is made responsible to the seamen for the seaworthiness of his vessel?—I understand that that is so with regard to general seaworthiness, but not with regard to the general finding of the vessel.

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Mr. *Shaw Lefevre*—continued.

247. As to the general condition of seaworthiness of a vessel, you would apply the same principle to works on shore?—Yes.

248. For the same reason, that it is to the interest of the public that the responsibility for the general efficiency of the plant and machinery and material should be with the employer?—Yes, quite so.

249. You think that that would tend towards greater safety?—I do.

250. And to the prevention of accidents?—Yes, I do.

251. Take the other question, namely, the case of common employment; do I understand you to carry that out to its furthest extent, so as to admit of no cases in which common employment should hold the employer harmless?—I make no exception, unless a person has contributed himself to the injury.

252. Let me take the case where there has been habitual carelessness on the part of one of the workman; would you consider that if the other workman has not informed his master of it, the master should still be liable?—Yes.

253. Take the case of a ship where one man perhaps has been habitually negligent on the look-out, would you hold the shipowner responsible in such a case for the negligence of that man?—Undoubtedly.

254. Although his fellow-seamen had not given notice to the captain of the negligence of this man?—Yes; I think it is the captain's duty or the foreman's duty to see that the man has done his duty in that direction, unless he has allowed some other person to take that responsibility off his shoulders.

255. You would not make any exception even in such a case as that?—No; I would increase their responsibility so as to bring a more direct control to bear upon them.

256. Take the case where a workman has been habitually negligent in carrying a lighted candle into a mine, and that the other workmen knew it; would you make an exception in such a case as that?—It seems to me that in a case of that description, if it could be proved, they would be contributing to their own injury.

257. Do you consider that to be a case where there is contributory negligence?—I think in a case of that kind they would all contribute to the injury if they knew that it was dangerous that a man should carry the lighted candle into the mine which caused an explosion; they would all contribute, and it would be for them to prove that they had not been cognizant of the fact.

258. Put the case where a workman may have been habitually negligent, although in that particular case, the other workmen may not have been in a position to prevent his taking a candle down; would you consider it contributory negligence that they had not informed the master or the foreman, that that particular workman had been habitually negligent?—I think there is a word that is used in the Bill which is before the House, "materially contribute"; that is a very good word, because I think it should be shown that a man had materially contributed to the accident or injury, either by not doing something, or by doing something which had tended to cause the accident itself.

259. You were asked some questions as to the possibility of the workmen, and the employer

Mr. *Shaw Lefevre*—continued.

contracting themselves out of the general law; are you aware that in the Merchant Shipping Act, the contract of seaworthiness, as between the shipowner and the seamen, is of such a character that the shipowner and the seamen cannot contract themselves out of it?—I understand that it is so, and I have generally understood that it is a principle in law that a man cannot contract himself out of any general law.

260. At all events, you would hold that that is a right principle to carry out universally?—I do; and I would apply it in this instance.

Mr. *Tennant.*

261. You say that you would not admit the term "accident," at all, in the sense of giving immunity to an employer?—I do; or at least only in the same sense as immunity applies in the case of strangers.

262. Whatever was the cause, if the accident was entirely unavoidable and unpreventible, still you think that the employer should be liable?—I do. I mean in so far as the law at present applies to persons other than workmen.

263. Are you aware that now the law does not make the employer liable even to third parties in such a contingency as that. Take the case of an accident on a railway where that accident has not been caused by the negligence of any person but through some act which was utterly beyond the control of anybody, there is no liability then?—Railway companies are liable to persons injured through accident. I only want the same principle to apply to railway servants as to travellers.

264. There, I believe, you are under a mistake. You said, in answer to an honourable Member, that you would not admit the term "accident" at all in the sense of granting immunity to the employer. I want to know really whether you meant that, or whether that would not be going further than you intended. I did not know whether you quite understood the extent to which you were going?—The extent to which I desired to go was that of the general principle of law relating to accidents. This, so far as I understand by reading the instances that have occurred, and which have been of recent decision, is that the general principle shall apply alike to strangers (I am not urging that it should go further than that) and to those in common employment. I was rather afraid at the time, and that is why I asked the honourable Member to repeat his question once or twice, whether I quite understood the drift of the question, and he will excuse my having done that because I was doubtful at the moment.

Sir *Henry Jackson.*

265. I was talking to you on the subject of interpretation, and I wanted to know how far you would go?—I was doubtful whether I was not going beyond the limit.

Mr. *Macdonald.*

266. You were asked by the honourable Member for Coventry if you would hold the employer responsible, if a man entered into a contract with him to do certain dangerous work; and your answer was, that in that case you thought you would not?—Only in a special and specific case.

267. But if the employer neglected to fulfil his portion of the special and specific contract, would you not hold him responsible?—Undoubtedly.

*Friday, 14th July* 1876.

MEMBERS PRESENT:

Mr. Cawley.
Sir Daniel Gooch.
Mr. Knowles.
Mr. Shaw Lefevre.
Mr. Lowe.
Mr. Macdonald.
Mr. Meldon.
Mr. Mundella.
Mr. Eustace Smith.
Mr. W. Stanhope.
Mr. Tennant.

THE RIGHT HONOURABLE ROBERT LOWE, IN THE CHAIR.

Mr. COURTENAY PEREGRINE ILBERT, called in; and Examined.

Mr. C. P. Ilbert. 14 July 1876.

*Chairman.*

268. YOU are a barrister, are you not?—Yes.

269. You have given much attention to the subject of the law of liability of masters for the negligence of servants?—In 1871 I was asked by the Board of Trade to look up the cases relating to the subject, and draw up a short memorandum, stating the most important cases, and the conclusions of law which might be derived from them.

270. The Committee would be glad if you would state to them, as nearly as you can, what you conceive the law to be on the subject. First, I will ask you as to what is the law of liability, criminally, of a master for the negligence of his servant?—The master is only liable, criminally, for the acts of his servant when he expressly commands or personally co-operates in them.

271. No amount of mere negligence would make him criminally liable?—There is an apparent exception in certain cases; under certain penal statutes the master is liable for acts which he has not commanded or authorised; but these are not quite cases of criminal liability in the proper sense. I give, as an instance, the revenue laws; a master may be fined for a breach of the revenue laws committed by one of his servants, in the case of smuggling, and so on.

272. The revenue laws are generally considered exceptional to all laws, are they not?—There are other Acts of the same kind. Under the Alkali Act, for instance, the owner of an Alkali work, in which an offence against the Act has been committed, is deemed to have committed an offence, unless he proves that he has used due diligence to comply with the Act, and that the offence was committed by some agent, servant, or workman (to be charged by name), without the knowledge, consent, or connivance of the master.

273. Is there anything on the subject in the Act with regard to mines?—Yes; there are similar provisions in the Mines Regulation Acts. Under the Mines Acts, the owner of a mine is deemed to have committed an offence unless he proves that he has taken all reasonable means to prevent its commission, and for that purpose he may give evidence.

*Chairman*—continued.

274. What sort of offence do you allude to?—Breaches of the statutory regulations, as for instance, not using due precautions with respect to explosive substances; but I am speaking without book, simply from memory.

275. With regard to civil liability of the master for the negligence of servants, what is the law in that case?—The general law is, that a master is liable to pay compensation for the consequences of a wrongful act, neglect or default of his servant committed in the course of his employment.

276. What meaning does the law attach to these words, "the course of his employment"?—There are some very nice cases upon the subject, and it is rather difficult to ascertain the meaning of the expression. I can give you an instance of a case on each side of the line. Here is one case: A servant drove a cart negligently in the city, and caused damage. It was proved that the cart ought not in carrying out the master's orders to have been in the city at all, yet the master was held liable.

277. On what principle did the court hold that?—The principle was, that he was driving the cart in the ordinary course of his employment.

278. Now, will you give us a case on the other side of the line?—On the other hand, a servant, after finishing the business of the day, drove a cart without his master's leave or knowledge to take a fellow workman to a railway station, and an accident occurred on the way back, and there it was held that the master was not liable. You will observe that that was after the regular business hours.

279. Did it turn upon its being after the regular business hours?—I presume so.

280. That is the general law, as you say?—Yes, that is the general law.

281. Are there exceptions to that law?—There is one exception. The exception is where the person injured is a servant of the employer who would otherwise be so liable, and where the injury is caused by a fellow servant of the person injured. There the employer is not liable.

282. Is that an ancient doctrine of law, or has

Mr. *C. P. Ilbert.*

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*Chairman*—continued.

it been recently introduced?—The earliest case which is cited is an authority for this rule, is the case of Priestley and Fowler. Priestley and Fowler was a case which happened in 1837, and it was of this kind: A butcher sent his servant somewhere in one of his vans; the van was overloaded and broke down, and the servant broke his thigh. The servant brought an action against the master for negligence, and it was in deciding that case, that Lord Abinger held that the master was not liable to pay compensation to the injured servant, and delivered a judgment, containing a number of illustrations, which have been very often since quoted. Perhaps I may refer to some of them. He said, "If the master be liable to the servant in this action, the principle of that liability will be found to carry us to an alarming extent. He who is responsible by his general duty, or by the terms of his contract for all the consequences of negligence in a matter in which he is the principal, is responsible for the negligence of all his inferior agents. If the owner of the carriage is, therefore, responsible for the sufficiency of his carriage to his servant, he is responsible for the negligence of his coachmaker, or his harness-maker, or his coachman. The footman, therefore, who rides behind the carriage may have an action against his master for a defect in the carriage owing to the negligence of the coachmaker, or for a defect in the harness, arising from the negligence of the harness-maker, or for drunkenness, neglect, or want of skill in the coachman; nor is there any reason why the principle should not, if applicable in this class of cases, extend to many others. The master, for example, would be liable to the servant for the negligence of the chambermaid for putting him into a damp bed; for that of the upholsterer for sending in a crazy bedstead, whereby he was made to fall down while asleep, and injure himself; for the negligence of the cook, in not properly cleaning the copper vessels used in the kitchen; of the butcher, in supplying the family with meat of a quality injurious to the health; of the builder, for a defect in the foundation of the house, whereby it fell, and injured both the master and the servant by the ruins. The inconveniences, not to say the absurdity of these consequences, afford a sufficient argument against the application of this principle to the present case. But, in truth, the mere relation of the master and the servant never can imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do of himself. He is, no doubt, bound to provide for the safety of his servant in the course of his employment, to the best of his judgment, information, and belief. The servant is not bound to risk his safety in the service of his master, and may, if he thinks fit, decline any service in which he reasonably apprehends injury to himself; and in most of the cases in which danger may be incurred, if not in all, he is just as likely to be acquainted with the probability and extent of it as the master. In that sort of employment especially which is described in the declaration in this case, the plaintiff must have known as well as his master, and probably better, whether the van was sufficient, whether it was overloaded, and whether it was likely to carry him safely. In fact, to allow this sort of action to prevail would be an encouragement to the servant to omit that diligence and caution which

*Chairman*—continued.

he is in duty bound to exercise on the behalf of his master, to protect him against the misconduct or negligence of others who serve him, and which diligence and caution, while they protect the master, are a much better security against any injury the servant may sustain by the negligence of others engaged under the same master than any recourse against the master for damages could possibly afford. We are therefore of opinion that the judgment ought to be arrested." There are one or two remarks which I should like to make on that judgment. In the first place, it has been stated subsequently by Chief Baron Pollock, that although the rule as to the negligence of a fellow servant was laid down for the first time in Priestley and Fowler, yet it must have previously existed. All I can say is that there is no trace of it in the law books at any earlier date than this; and no reference appears to have been made to it by the counsel for the defence in the case of Priestley and Fowler. Yet it is hardly possible that he should not have referred to such a rule, if it existed.

283. What do you understand the rule to be, that which was laid down in Priestley and Fowler?—That brings me to the second point. I do not think that any distinct rule is laid down in the case. Priestley and Fowler is cited as an authority for a rule, for which it is not in reality an authority. The remarks of Lord Abinger are very loose, and a great many of them are equally applicable to other relations than the relation of master and servant. For instance, all those dicta about a negligent chambermaid and a negligent cook, and so on, are quite equally applicable to the relation between innkeeper and guest, and most of his remarks are equally applicable to the relation between carrier and passenger, and there is no reason why they should apply exclusively to the relation between master and servant.

284. Is not the decision rather that the master is not bound to warrant his plant, if I may so speak, and that the fact of the person injured being a servant, exempts the master from liability?—I think that doctrine has been more expressly laid down in late cases.

285. He speaks of the van; that he is not bound to warrant his van; that would be quite a different case, would it not?—That is an entirely different case, no doubt.

286. Have you anything more to say in that case?—I think I have no more.

287. Will you proceed from that to the next case?—The next case of importance is an American case which was decided in 1842, and has been treated as of a certain authority in the English law courts. The name of the case is Farwell *versus* the Boston and Worcester Railroad Corporation, and it is reported in the fourth volume of Metcalf's Reports, and also in the third volume of Macqueen's House of Lords' Reports. The case was this: Two persons were employed by the defendants in their business, the one as an engineer to manage the engines and cars on the road, the other to manage the switches on the railway. The latter, although he was properly selected by the company as a person of due skill and reasonable diligence, negligently put or left a switch across the railway, whereby the engine and cars were thrown off the line, and the engineer was severely injured. He brought an action against the company for the injury sustained, but it was held that

*Chairman*—continued.

that the action was not maintainable, but should have been brought against the wrong-doer himself. Chief Justice Shaw pronounced an elaborate judgment, which he based, so far as I understand it, on doctrines both of law and of public policy. First of all, he propounded this dilemma. He said the plaintiff must sue either on contract or in tort. If the plaintiff sues on the contract there is, he said, no contract on the part of the employer to indemnify the servant, and therefore he cannot succeed. (I may say, in passing, that that begs the question as to what the contract between the employer and the servant is.) If he sues in tort, that is to say, on the ground of wrong, he cannot succeed, because the relations between an employer and a servant are regulated entirely by the contract between them. I think the fallacy in that is that there are a great many cases in which a person may sue either on contract or in tort, and where a person is liable both on a contract and on the ground of general negligence. Therefore the dilemma seems to me to be a false dilemma. I have no doubt that the real ground on which he rested his judgment was the ground of public policy, and he states this ground as follows:—"Where several persons are employed in the conduct of one common enterprise or undertaking, and the safety of each depends much on the care and skill with which each other shall perform his appropriate duty, each is an observer of the conduct of the others, can give notice of any misconduct, incapacity, or neglect of duty, and leave the service if the common employer will not take such precautions and employ such agents as the safety of the whole party may require. By these means the safety of each will be much more effectually secured than could be done by a resort to the common employer for an indemnity in case of loss by the negligence of each other." Then he goes on to add a caution against any hasty application of this rule, and says: "We are far from intending to say that there are no implied warranties and undertakings arising out of the relation of master and servant. Whether, for instance, the employer would be responsible to an engineer for a loss arising from a defective or ill-constructed steam engine, whether this would depend upon an implied warranty of its goodness and sufficiency, or upon the fact of wilful misconduct, or gross negligence on the part of the employer, if a natural person, or of the superintendent or immediate representative and managing agent in case of an incorporated company, are questions on which we give no opinion." The ground of public policy apparently was this; that in the interests of public safety an inducement ought to be given to persons working in a common employment to look after each other; each ought to see that each other observes due precautions.

288. Am I right in saying that that case is the first that laid down the doctrine of common employment as relieving the master from liability?—I think one may be safe in saying so. It is an American case, in 1842.

289. Does it allude to Priestley *v.* Fowler?—Yes, there is a reference to Priestley and Fowler.

290. Will you read what is said about it?—The judgment in the case of Farwell *v.* The Boston and Worcester Railroad Corporation, begins in this way: "This is an action of new impression in our courts, and involves a principle of great importance. It presents a case where two persons are in the service and employment of one company,



*Chairman*—continued.



whose business it is to construct and maintain a railroad, and to employ their trains of cars to carry persons and merchandize for hire. They are appointed and employed by the same company to perform separate duties and services, all tending to the accomplishment of one and the same purpose, that of the safe and rapid transmission of the trains, and they are paid for their respective services according to the nature of their respective duties, and the labour and skill required for their proper performance. The question is, whether for damages sustained by one of the persons so employed by means of the carelessness and negligence of another, the party injured has a remedy against the common employer. It is an argument against such an action, though certainly not a decisive one, that no such action has before been maintained. It is laid down by Blackstone that if a servant, by his negligence, does any damage to a stranger, the master shall be answerable for his neglect. But the damage must be done whilst he is actually employed in the master's service, otherwise the servant shall answer for his own misbehaviour." Then there is a reference to volume 1 of Blackstone's Commentaries, page 431. Then he goes on afterwards: "It was conceded that the claim could not be placed on the principle indicated by the maxim *respondeat superior*, which binds the master to indemnify a stranger for the damage caused for the careless, negligent, or unskilful act of his servant in the conduct of his affairs. The claim, therefore, is placed, and must be maintained, if maintained at all, on the ground of contract. As there is no express contract between the parties applicable to this point, it is placed on the footing of an implied contract of indemnity arising out of the relation of master and servant. It would be an implied promise arising from the duty of the master to be responsible to each person employed by him in the conduct of every branch of business, where two or more persons are employed, to pay for all damage occasioned by the negligence of every other person employed in the same service. If such duty were established by law, like that of a common carrier, to stand to all losses of goods not caused by the act of God, or of a public enemy, or that of an innkeeper, to be responsible in like manner for the baggage of his guests, it would be a rule of frequent and familiar occurrence, and its existence and application, with all its qualifications and restrictions, would be settled by judicial precedent. But we are of opinion that no such rule has been established, and the authorities, as far as they go, are opposed to the principle." Then there is a reference in a note to Priestley *v.* Fowler, 3 Meeson and Welsby, and to another American case.

291. Now, will you give us the next case?—The first really leading case in England is the case of Hutchinson *v.* The York, Newcastle, and Berwick Railway Company, which was decided in 1850, and is reported in the 5th volume of the Exchequer Reports. The case was that of a railway servant travelling as a passenger by train, and owing to the negligence of the engineer the train came into collision with another, and the servant was injured. He brought an action against the railway company, demanding compensation, and in the course of his judgment Baron Alderson says: "This" (referring to the neglect of the other servant) "was a risk which Hutchinson

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son must be taken to have agreed to run when he entered into the defendants' service, and for the consequences of which therefore they are not responsible." Then he says further, "The principle is, that a servant when he engages to serve a master undertakes, as between him and his master, to run all the ordinary risks of the service, and this includes the risk of negligence on the part of the fellow servant whenever he is acting in discharge of his duty, as servant of him who is the common master of both." The same principle was affirmed by Chief Baron Pollock in a judgment delivered on the same day, in the case of Wigmore and Jay.

292. Was any authority cited in either of those judgments?—Reference is made to Priestley and Fowler, but not to any other authority. In those cases it appears that the decision was based on the contract, on the ground that a servant when he enters service contracts to run all the ordinary risks of the service.

293. What is the next case?—After that there were a series of English cases defining the meaning of risks incidental to the service. There was a strong case, the case of Seymour and Maddox, in which the Court of Queen's Bench held that the manager of a theatre was not liable to an action at the suit of a singer for injuries sustained by his falling through a hole in the stage. That was rather a questionable decision.

294. When was that decided?—In 1851. Then there was a decision in Skip *v.* the Eastern Counties Railway Company, which extended the meaning of "risks incident to the service." It was a case of a railway accident, and it was held that a risk arising from the circumstance that the company is in the habit of employing an insufficient number of hands to the knowledge of the person undertaking the service, is a risk incident to his contract of service. Here are some remarks made by the judges: Baron Parke says, "The defendants were not bound to keep 20 servants; they are to be the judges of the number. They are, indeed, bound to see that their servants are persons of proper care and skill." Then Baron Alderson says, "The jury are not to be the judges of the sufficiency of the number of servants a man keeps. The plaintiff stayed in this situation three months, without having an under guard to assist him, and without making any objection." Then Baron Parke says, "He goes into the service and willingly incurs the danger." Therefore apparently in that case the judgment was based upon the doctrine of acquiescence on the part of the servant. It was held that a servant could not complain that through insufficiency of servants he ran more risk. Then there was an important case, the case of Couch *v.* Steel, decided in 1854. It is important because it applied the doctrine of Priestley and Fowler to the relation of shipowner and seaman. It was an action brought by a seaman against a shipowner, and the first count of the declaration alleged that "the defendant so negligently fitted out and equipped the said vessel that, by reason thereof, she was unseaworthy, and the plaintiff was thereby obliged to undergo unreasonable labour, and was injured in his health;" on which Lord Chief Justice Campbell remarks, "It seems to me that there is no contract or duty disclosed in this count for a breach of which the defendant is liable. In all that appears, the defendant was

*Chairman*—continued.

quite ignorant of there being any defects in the ship, and the defendant himself may have examined her and been aware of her condition. If both parties had been aware of the unseaworthiness, it might stilll have been the intention of the plaintiff to serve in her, and that in consideration of his having to work harder he should receive higher wages. If that were so, there being no *scienter* alleged" (that is to say, it not being alleged that the master knew of the defect), "and no personal blame imputed to the defendant, if this action could be maintained, the owner of a ship would be liable to an action, at the suit of every sailor, if a plank started, from accident or neglect, so that the ship was not seaworthy, there being no personal neglect of the owner whatever. No such action has ever been brought, and such a declaration is quite of the first impression; nor is there any decision, authority, or principle which has been cited in support of such a doctrine." Then, in support of the reverse doctrine, he refers to Priestley and Fowler. Perhaps I might say that it would have been possible in that case to support the seaman's right of action without going so far as to hold that the shipowner warranted the seaworthiness of the ship. The seaman might have been treated as standing in the same relation to the shipowner as a passenger does. As between himself and a passenger the owner does not warrant the seaworthiness of a ship, but he undertakes that due care shall be exercised.

295. The *scienter* would be a fatal point, as it would be almost impossible to prove whether the shipowner knew it or not?—No, I think not. I think, in the case of a passenger, the shipowner would be liable for the wrongful acts, neglects, or defaults of his agent or servant.

296. If he knew?—Whether he knew or not. The agent must be guilty of negligence, but the master need not have been guilty of personal negligence. Then I do not think that I need refer, at this stage, to any further English cases; but, meanwhile, there have been a series of decisions in the Scotch courts, which are important, because they show the very strong disposition, on the part of the Scotch judges, to reject the English doctrine as forming no part of the Scotch law. And in one of them, in the case of Dixon and Rankin, Lord Cockburn repudiates the doctrine in the very strongest possible terms. He says it never formed any part of the law of Scotland, and he objects to it, both on principle and on authority. The cases to which I refer are the cases of Sword *v.* Cameron, which was decided in 1839, shortly after Priestley and Fowler; the case of Dixon *v.* Rankin, or Neilson, decided in 1852, and the case of Gray and Brassey, decided in 1852. Those cases showed that the Scotch courts and the English courts were not at one on this subject, and it soon became necessary to bring the Scotch decisions and the English decisions into harmony with each other. This was done by the judgment in the very important case of the Bartonshill Coal Company *v.* Reid. This was a case which was brought before the House of Lords on appeal in 1856, which Lord Cranworth took two years to consider, and which was decided in 1858, when judgment was delivered in two cases, both raising the same point; one, the Bartonshill Coal Company *v.* Reid; and the other, the Bartonshill Coal Company *v.* Maguire. I should

say

*Chairman*—continued.

say, before coming to this case, that there had been an intermediate case decided by the House of Lords, which qualified the doctrine in Priestley and Fowler, in a sense favourable to the workman; I mean the case of Brydon *v.* Stewart, which was decided in 1854, in which they laid down the rule that when a master employs his servant in a work of danger, he is bound to exercise due care in order to have his tackle and machinery in a proper condition, so as to protect the servant against unnecessary risks. What the Bartonshill Coal Company *v.* Reid decides is this: first, it recognises and confirms the English and American doctrine, that a master is not responsible for an injury to one of his workmen, caused by the negligence of a fellow-workman engaged in a common work, and over-rules the decisions of the Scotch Courts so far as they conflict with this doctrine. Secondly, it recognises the principle established by the judgment in Brydon *v.* Stewart, that a master who employs his servant in a work of danger is bound to exercise due care in order to have his tackle and machinery in a proper condition, so as to protect the servant against unnecessary risks. Thirdly, it appears to recognise the doctrine laid down in another case which I have not mentioned, the case of Tarrant *v.* Webb, that it is the duty of the master to get competent servants, but it throws upon the person injured the burden of proving that the employer had failed to exercise due care in the selection of his servants. This judgment of Lord Cranworth, in the first of the Bartonshill cases, was followed and confirmed by the judgment of Lord Chelmsford and Lord Brougham, in the second Bartonshill case. In the course of these latter judgments, however, considerable stress was laid on the phrases "common service" or "common employment," and the result of the remarks made upon those phrases was a still further divergence between the decisions of the English courts and the decisions of the Scotch courts. There were several cases in the English courts, the decisions of which turned upon the meaning to be attached to the phrase "common employment," and the tendency of the English decisions was to give a very wide signification to the term. Here are some instances: A chief engineer and a third engineer on board a steamer; a labourer employed in loading bricks, and a deputy foreman of platelayers; one of a gang of scaffolders and the foreman of the gang; a carpenter and joiner employed in painting an engine-shed near a turn-table, and the company's servants engaged in managing traffic, who negligently turned a carriage on the turn-table and upset a ladder, whereby the painter was thrown down and injured; a miner and an underlooker, whose duty it was to superintend the mining operations, and a workman employed by an engine-maker; and the foreman who ordered him to get on a travelling crane, moving on a tramway, which fell, and injured the workman,—all of these have been held by the English courts to be fellow-servants, within the meaning of the rule. On the other hand, in Scotland, the most important questions on the meaning of "common employment" arose in the case of mines, where the underground manager is necessarily invested with extensive powers and duties, and has the superintendence of all the underground operations of the colliery; and it appeared to the Scotch judges that such a person might



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fairly be held to be rather the agent or representative of the master than a fellow-servant with the ordinary colliers. That was the view taken by the Scotch judges, in the case of Somerville *v.* Gray. It was held that the person who had been guilty of negligence in that case was not a fellow-servant with the person injured, but was the representative of the mining company, or the mineowner, and, accordingly, that the mineowners were responsible for the injury done through his fault or negligence. This point was raised still more definitely in 1867, by the case of Wilson *v.* Merry, which was tried before Lord Ormidale, the late Scotch judge. The case was this: one Wilson, a miner, had been killed by an explosion of fire-damp, which appears to have been caused by the erection of a platform which impeded the free circulation of air in the pit. It appears that "the general manager of the defendant's works, in Lanarkshire, was a Mr. Jack. The manager of the Haughhead coal-pit, underneath Jack, was John Neish, and subordinate to Neish was a man named Bryce, who attended to the underground operations; one, Neill Robson, formerly a mining engineer, was a partner with the respondents; and it was under the general direction of the respondents and of Robson and Jack that the working of the Pyotshaw seam was commenced. The charge of sinking the pit, and making arrangements under-ground for working it, was given to Neish. It was proved at the trial, and indeed not controverted, that Jack and Neish were competent persons for the work on which they were engaged, selected by the respondents with due care, and furnished by the respondents with all necessary materials and resources for working in the best manner." Under the circumstances the relation between the person who was injured and the person who immediately caused the injury, was left as a question of fact to the jury. The Scotch judge declined to decide whether he was or was not a fellow workman with the person injured; he left the question to the jury, that is to say, he did not go so far as the judgment in the case of Somerville and Gray, but left the whole question to the jury. That case was taken on appeal to the House of Lords, and was decided by the House of Lords in 1868. The case of Wilson *v.* Merry is reported in the first volume of the House of Lords, Scotch appeals, and may now be regarded as the leading case on the subject in the English and in the Scotch courts, and the law there stated is the law which has ever since been regarded as binding. The effect of the decision has been, first, To reject the view that the foreman might be considered the delegate of his employer, or that the question of his position might be left to the jury; secondly, To enforce the wide meaning which the English judges had given to the term, "common employment." For instance, Lord Cranworth observes, "Workmen do not cease to be fellow workmen, because they are not all equal in point of station or authority;" and lastly, To place the doctrine of the master's immunity on broader grounds, and to show that the true criterion is not whether the person causing, and the persons suffering from, the accident are fellow workmen in any strict sense of the word, but whether the damage was within the risk incident to the service undertaken for reward; that is to say, the rule is based, not on the phrase "common

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employment," but on the meaning of the contract; on the terms expressed or implied in the contract between the employer and the person employed.

297. Does not that come very much to the same thing?—Yes, but it is based on more legal grounds, though, perhaps, not satisfactory legal grounds.

298. They would say that the contract was that you are to bear the damage inflicted upon you by the other workmen?—These are Lord Cairns' remarks: "I do not think the liability or non-liability of the master to his workmen can depend upon the question whether the author of the accident is or is not in any technical sense the fellow-workman, or collaborateur of the sufferer. In the majority of cases in which accidents have occurred, the negligence has, no doubt, been the negligence of a fellow-workman, but the case of the fellow-workman appears to me to be an example of the rule, and not the rule itself. The rule, as I think, must stand on higher and broader grounds. The master is not, and cannot be, liable to his servant, unless there be negligence on the part of the master in that which he, the master, has contracted or undertaken with his servant to do." I think I ought to go on and read the remarks which immediately follow that: "The master has not contracted or undertaken to execute in person the work connected with his business. The result of an obligation on the master personally to execute the work connected with his business, in place of being beneficial, might be disastrous to his servants, for the master might be incompetent personally to perform the work. At all events a servant may choose for himself between serving a master who does and a master who does not attend in person to his business. But what the master is, in my opinion, bound to his servant to do in the event of his not personally superintending and directing the work is to select proper and competent persons to do so, and to furnish them with adequate materials and resources for the work. When he has done this he has, in my opinion, done all that he is bound to do. And if the persons so selected are guilty of negligence, this is not the negligence of the master; and if an accident occurs to a workman to-day in consequence of the negligence of another workman, skilful and competent, who was formerly but is no longer in the employment of the master, the master is, in my opinion, not liable, although the two workmen cannot technically be described as fellow-workman. As was said in the case of Tarrant *v.* Webb, negligence cannot exist if the master does his best to employ competent persons; he cannot warrant the competency of his servants." That I think may be taken as a statement of the existing law.

299. Let me ask in passing, would not that destroy the present law of railway liability altogether?—It must be qualified with reference to the particular case. You must read that paragraph as equivalent to this; negligence as between master and servant cannot exist if the master does his best to employ competent persons; that is to say, there is a distinction between the case of a servant and the case of a passenger. If the doctrine were extended to the case of passengers, I quite agree that it would destroy altogether the liability of railway companies. Of course I cannot criticise Lord Cairns' decision as a statement of law, but it seems to me to be open to one or two observations. The decision is based on the ground

*Chairman*—continued.

of a contract between employer and workman, and on the view that a workman, when he enters the service, enters into an implied contract to run all the risks incidental to the service. The objection to that, it seems to me, is this, that the law imports a term into the contract between the master and the servant, which it does not import into a contract between a carrier and a passenger. The servant might say that he does not so contract.

300. As a matter of fact, he does not?—As a matter of fact, he does not; but the law says he does. There is no reason why he should not so contract in certain cases. There is no reason why he should not enter into a special contract to run the risks, but I think it should be a special contract. I do not see why it should be implied in every case. The other observation is this. The decision seems to assume that the master cannot be liable except upon his contract; that the master cannot be liable unless there be negligence on the part of the master in that which he, the master, has contracted or undertaken with his servant to do. Well, in this case the law does not import into the contract, as it might, an undertaking on the part of the master that due care shall be used by the master's servants and agents. Moreover is it quite accurate to say that a master cannot be liable except upon his contract; if common law obligation, or a statutory obligation were imposed upon him, would he not also be liable for a breach of that obligation?

301. A common law obligation and an action on the case?—Yes; those are the criticisms to which I think the decision is open. That case has laid down the doctrine so clearly and unmistakably that it is not necessary to refer in detail to any of the following cases. It once more harmonised the Scotch and English rule, and it has been the foundation of all subsequent decisions. There have been numerous cases on this rule since, and they have mostly turned on such questions as whether an accident was caused by the negligence of a fellow servant or by a defect in the machinery, whether a master has fully and sufficiently observed certain statutory precautions which he is required to observe; and whether the servant knew of and voluntarily incurred the risk, so as to bring the case within the rule *volenti non fit injuria*. But they do not, as it appears to me, either extend or limit the doctrine laid down in the case of Wilson *v.* Merry. There is only one of these cases to which I should like to refer, and that is a very recent one, decided in February 1876, and reported in one of the last numbers of the Law Reports. It is the case of Lovell and Howell in the Common Pleas Division of the High Court of Justice. It turns on the meaning of the term "common employment," and it is rather a good illustrative case. The case was this: "The plaintiff (who was a licensed waterman and lighterman) was in the employ at weekly wages of the defendant, a corn merchant and warehouse keeper; his ordinary duty being to attend at the waterside of the premises every tide for about an hour and a half before and after high water for the purpose of bringing barges to and from the wharf, and there mooring and unmooring them. It was no part of his duty to load or unload the barges, or to assist in any way in the work of the warehouse; but it was his habit to go to the office on the land side of the warehouse

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warehouse for orders, or when sent for by the defendant's manager. There were two ways of going there, viz., by landing from his boat at stairs at the end of the street next adjoining the warehouse, or by stepping from the barges into and going through the warehouse, and out by a door to the street. He usually went by this latter way. Being on the barges at a time when his actual duty did not require him to be there, he was sent for to the office, and was proceeding thither by his accustomed route, when, in passing out from the warehouse door to the street, he was knocked down and injured by a sack of grain which another of the defendant's men was in a negligent manner hoisting by means of a crane from a waggon." It was held that the negligent servant was a fellow servant with the person injured. But I refer to the case principally on account of some remarks of Mr. Justice Brett's. He says this: "It does not appear whether or not he" (the person injured) "was bound by the terms of his original hiring to go to the office for orders; it is enough to say that it had become his usual course to go there by stepping from the barges and passing through the warehouse. That being so, and an accident having happened to him, by the negligence of other servants in his master's employ, whilst he was so passing through the warehouse to the office, the question is whether he can recover damages for it against his master. Now, I decline to say, because I feel a difficulty in understanding or defining it, what is the precise principle on which the immunity of the master in these cases rests. But I am bound by law and by the authority of decided cases, to say that such immunity does exist. If, under circumstances substantially similar to those of the present case, the courts have held that the plaintiff cannot recover, it is impossible for me to break from those decisions. Inasmuch, therefore, as I am unable to distinguish from this the cases of Morgan *v.* Vale of Neath Railway Company and Tunney *v.* Midland Railway Company" (which are cases decided on the rule in Priestley and Fowler) "I feel obliged, however much I regret it, to decide against the plaintiff on the present occasion." Then I will read two or three lines from Mr. Justice Archibald's judgment: he says, "I must confess I do not feel so much difficulty as my Brother Brett does in deducing from the authorities the principle upon which the immunity of the master from the consequences of the negligent acts of his servants in these cases rests."

302. Mr. Justice Brett's was not a difficulty of deducing it from the authorities, but he did not like authorities?—He did not understand the principle, and he was unable to define it; he said that he could not state the principle; but Mr. Justice Archibald says, "I think it may be expressed in this way: When a man enters into the service of a master he tacitly agrees to take upon himself to bear all ordinary risks which are incident to his employment, and, amongst others, the possibility of injury happening to him from the negligent acts of his fellow-servants or fellow-workmen." Thus Mr. Justice Archibald rests the doctrine on this tacit or implied agreement, whilst it may be fairly asked why such an agreement should be implied in the relation of servant and master, when it is not implied in the relation of carrier and passenger.

303. Whenever we set up a contract, ought not there to be some proof of its existence?—Yes, but some of the terms of a contract may be implied by law, or may be shown to be implied by custom.

*Chairman*—continued.

Mr. *Knowles.*

304. Could not it be implied by his accepting employment and receiving his wages for it?—It might be implied from general usage, understanding, or custom. The usage may be either general or confined to a particular trade or to a particular place.

Mr. *Tennant.*

305. What was the date of that last decision?—February 1876. There is also a decision in the case of Allen *v.* The New Gas Company, given on the same day, 26th February, but reported later. The company had on their premises gates which were safe when open and wedged up, but liable to fall when closed. The attention of the manager had been directed to the unsafe condition of the gates, and orders had been given, but not carried out, to remedy this. The plaintiff, a workman in the employ of the defendants, passed through the gates when open, but on his return one of them was closed, and shortly afterwards, while he was working near the gates, they fell on and injured him. There was no evidence to show how this happened, nor any evidence that the manager and other persons employed by the defendants were incompetent. In that case it was held that the defendants were not liable, as the plaintiff had not shown that the persons employed by the defendants were incompetent, and the negligence, if any, which caused the accident, was that of a fellow-workman of the plaintiff. This decision does not advance the doctrine, and I refer to it merely because some of the remarks in the judgment delivered by Baron Huddleston appear to me to be open to some criticism as a statement of the law. For instance, he says: "The mischief in this case arose from the conduct of the plaintiff's fellow-workman as such, and not from the defendant's default, nor from the default of any manager or vice-proprietor." But we have seen already that the English courts refuse to recognise the distinction between vice-proprietor and principal proprietor, so that I do not see how the default of a vice-proprietor could make any difference. There are several other cases, but I do not think they need be referred to at length.

*Chairman.*

306. Can you state to us, in a compendious form, what you consider to be the law on this subject with regard to the liability of a master to a servant for injuries inflicted by other servants?—I think it would be better first to state the general rule, to which the special rule on this subject is an exception. The general rule may be stated in two propositions; first, a master is liable to pay compensation for an injury caused by his own wrongful act, neglect, or default; secondly, a master is also liable to pay compensation for an injury caused by the wrongful act or default of any of his servants acting in the ordinary course of employment. There may be an exception to this second rule, where the person injured is a servant of the master who would otherwise be liable under that rule. The exception rests on the principle that a master is not liable to pay compensation to a servant for the consequences of a risk incident to the servant's

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contract of service. The most familiar instance of such a risk is the wrongful act, neglect, or default of a fellow servant. I am treating that as Lord Cairns treated it, as an example of the rule. The term "fellow servant" is not to be construed in any narrow or technical sense; it will, as a rule, include, first, persons engaged in different departments of the same work, if their work be of such a kind as to bring them into contact with each other; and secondly, a foreman or manager; or, I will add, on the authority of a remark of Mr. Justice Blackburn, the captain of a ship. But it will not include the master working himself as a fellow servant, or persons employed by different masters when working together. It is the duty of the master to select proper and competent servants, and to furnish them with adequate materials and resources for the work; but a master does not warrant the competency of his servants. It follows, therefore, that a servant who relies on the incompetency of a fellow servant as a ground of liability must allege and prove that the master has been guilty of negligence in the selection of his servant. In dangerous employments the master is bound to exercise due care in order to have his tackle and machinery in a safe and proper condition. But a master does not warrant the safety of his machinery to his servants; therefore the servant who wishes to make his master liable for an injury resulting from defective machinery, &c., must allege and prove, first, that the machinery, &c., was defective, and secondly, that the defect was attributable to the personal negligence of the master. Even then the master may exonerate himself by proving that the servant knew of and acquiesced in the risk, and acquiescence may be inferred from the absence of complaint. Where the servant is guilty of contributory negligence, the master is not liable, even where a statutory liability is imposed on the master. A further proposition might have been deduced from one of the decisions, viz., that a statutory obligation on the master to observe certain precautions enforced by a penalty does not diminish, but at the same time does not increase, the civil liability of the master towards the servant injured. However, I think doubt has been thrown on that proposition by a later case, so that I would not state it as a settled rule. That, I think, is the net result of the decisions, and may be stated to be the law as it stands.

307. That concludes your statement of the law as it stands?—Yes.

308. I will ask you one or two questions as to your opinion on the law; first, with regard to the general law which makes a man liable for the act of his servant, have you read a pamphlet by Mr. Joseph Brown on that subject?—No, I have not.

309. Have you formed any opinion with regard to the law; do you approve of that law, or do you consider it liable to injustice?—I approve of it; I consider it a just law, but often a very hard law.

310. You would not suggest any alteration in it if you had the power?—I would not.

311. Secondly, as to the exemptions from that law which you have been just stating to us, and which relieve a master from the consequences of the negligence of his servant; if the victim of the negligence be another servant, do you consider that that distinction is a well-founded one, and one which ought to be continued?—I do not.

*Chairman*—continued.

312. Do you see no ground for it at all?—I do see grounds for it, but I look at it in this way; it is an exception from a more general rule; it is an anomaly; it is what Roman lawyers would call an *inelegantia*, and as such, it should show cause for its existence. It is peculiar to English law, and to the law of the United States, which, in this respect, is borrowed from, and based on the English law. It was introduced into the English law quite recently, and without due discussion or legislative authority. It is said to be based on the authority of a judicial decision, but when that decision is examined, the case usually cited as the first authority for the rule is found on examination to be no authority at all, or at all events not to be an authority for the much wider proposition referred to it.

313. That, in a great measure, is a proposition which nobody disputes, that a master is bound to warrant the competency of his servants, or of his machinery?—In a great measure, that is a proposition which no one disputes. It was forced upon the Scotch tribunals against the wishes of some of the most eminent Scotch judges, and in spite of their very strongly expressed opinion that such a doctrine was unknown to Scottish law. It has been considered, and deliberately rejected by the tribunals of the highest authority in France. I can give the Committee a case on that point. It is a decision on Article 1384 of the Code Civil, which is as follows, roughly translating it: A person is liable not only for damage which he causes by his own act, but also for the damage which is caused by the act of the persons for whom he ought to answer, or by things under his charge. The father, and the mother after her husband's death, are liable for the damage caused by their children when minors living with them. Masters and *commettants* (who, I suppose, may be translated employers) are liable for the damage caused by their servants (*domestiques*) and their foremen (*préposés*) in the functions in which they are employed. Teachers and artisans are liable for the damage caused by their pupils and apprentices during the time in which they are under their surveillance. This liability obtains, unless the father or mother, the teacher or the artisan, prove that he could not prevent the act which gives occasion to this responsibility. There have been two decisions with which I have been made acquainted on this Article. One is in the case of Serandat *v.* Saisse, decided by the Judicial Committee of the Privy Council, on an appeal from the Mauritius, which is governed by French Law, and reported in L. R., 1 P., C. 152. It shows, that in order to make the *commettant* responsible for the negligence of the *préposé*, the *préposé* must be acting *sous les ordres, sous la direction et la surveillance du commettant* under the orders, directions and surveillance of his master. That is perhaps no more than the English doctrine as to the servant acting in the ordinary course of his employment. Then in the 1855 edition by Gilbert, of "Les Codes Annotés de Sirey," I find a note of the following decisions. It appears that in 1836 an action was brought in the court at Lyons by a workman against his master for the consequences of an injury caused by negligence, and it was held, so far as I can judge from the short note, that where the injury was caused by the negligence of a fellow workman, the master was not liable, that is to say, the Priestley and Fowler rule

*Chairman*—continued.

rule was observed. There appears to have been a decision to the same effect given by the Court of Toulouse on the 26th of June 1839. The latter decision was taken up to the Cour de Cassation, and the effect of the decision of the Cour de Cassation is stated in the following paragraph: "The master is liable for the injury which one of his servants or workmen has caused by negligence to another servant or workman in a work which they were charged to carry out in common. The wages agreed upon between the servant and his master cannot exempt the latter from his liability towards the party injured." The date of that decision is the 28th of June 1841, and it is to be found in Dalloz's "Jurisprudence Générale du Royaume," in the Volume for 1841, page 271, That is the only decision on this point with which I am acquainted in the French law.

Mr. *Meldon.*

314. Will you be so good as to give me the words in the Mauritius case upon which you say the decision turned?—In order to make the *commettant* responsible for the negligence of the *préposé*, the latter must be acting "*sous les ordres, sous la direction et la surveillance du commettant.*" *Commettant* seems to have been translated in the case as "foreman" or "overseer."

315. You think that the same principle has been engrafted on English law?—I think it is. Article 1384 of the Code Civil is in the original as follows: "On est responsable non seulement du dommage que l'ou cause par son propre fait, mais encore de celui qui est causé par le fait des personnes dont on doit répondre ou des choses que l'ou a sous sa garde. Le père, et le mère après le décès du mari, sont responsables du dommage causé par leurs enfans mineurs habitant avec eux. Les maîtres et les commettans, du dommage causé par leurs domestique et préposés dans les fonctions auxquelles ils les ont employées. Les instituteurs et les artisans, du dommage causé par leurs élèves et apprentis pendant le temps qu'ils sont sous leur surveillance. La responsabilité cidessus a lien, à moins que les père et mère, instituteurs et artisans ne prouvent qu'ils n'ont pu empêcher le fait que donne lieu à cette responsabilité." I have looked at the Italian Code, and the corresponding article in the Italian Code is Article 1153, which follows almost literally the French Code. I have looked through the annotated edition, but I cannot find any reference to an exception to that Article. Then, as to the German law, I have looked at the Austrian Civil Code, but there is nothing that bears directly upon the point. The German law is, I believe, not codified in Prussia to the same extent as it is in Austria, but perhaps I might read a short extract from one of the last editions of Holtzendorff's Encyclopädie, which is a work of authority, and, I think, may be fairly taken as stating the Prussian law as it stands now. I will read a rough translation of a passage in the edition of 1873, Part I., page 393. The remarks bear rather on the general law than on the exceptional rule in the case of fellow servants, but I think they are of some importance with reference to the present question. Under the heading of "Liability for the default of another," there are these remarks: "By Roman Law," which, I suppose, may be taken for these purposes as being the common law of Prussia, "a man is, as a rule, not liable for the fault of another, except

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when he himself is also in fault. This specially applies to the cases of agents, messengers, servants, &c. In those cases the principal or employer is considered to be himself in fault: (1.) Where he has directed the agent or servant to commit any wrongful act, such as would constitute a delict, or has ratified such an act when committed. (2.) Where he ought not to have delegated his work; or (3.) Where he has been negligent in the selection or supervision of his agents (*culpa in eligendo oder custodiendo*). The only exceptions from the above principles are the following: (1.) In agents contracts the principal is liable for what is called the contractual fault of the latter. (2.) The occupier of a room is liable for the consequences of whatever is thrown or poured out of the room, no matter by whom, or whether the occupier himself is or is not in fault, so long as somebody was in fault, and it was not a mere accident. (3.) Innkeepers and shipowners are liable to travellers for every theft or injury of things brought by them into the inn or ship, or sent for transport in a ship, except in a case of *vis major*, or what we call the "act of God;" that is an event arising from natural causes. Then the author, who is Professor Brüns, goes on to say: "These rules are not sufficient to meet the exigencies of modern life, especially in the case of such great industrial undertakings as railways, shipping, carriers, factories, mines, &c. If in accordance with the rules of Roman law the liability of the employer is limited to his negligence in selection and supervision (*culpa in eligendo et custodiendo*), whilst otherwise the employé in fault is alone liable, and in cases of accident there is no liability at all, the profit gained and the risk incurred by the employer would be out of all proportion to each other, and almost the whole risk would be transferred to the public and to the workman. For this reason the German Commercial Code has, in the case of carriage by land and by water, and especially in the case of railways, introduced a general liability on the carrier, from which *vis major* is the only exception, and has gone so far as to prohibit contracts in derogation of this liability. Further provision for the liability to pay compensation in the case of death or personal injuries occurring in connection with railways, mines, quarries, pits, and factories, is made by an Imperial law of the 7th of June 1871." I have that law with me, and it has an important bearing on the present subject. It is a law declaring the liability of railway companies, mining companies, manufacturers, and so on. Article 1 is, "Where, in the course of the working of a railway, a man is killed or suffers personal injury, the undertaker (der Betriebes-Unternehmer) is liable for the damage thereby caused, so far as he does not prove that the accident was caused by *vis major*, or by the default of the person killed or injured himself." Article 2 is, "Wer ein Bergwerk, einen Steinbruch, eine Gräberei (Grube) oder eine Fabrik betreibt, haftet, wenn ein Bevollmächtigter oder ein Repräsentant oder eine zur Leitung oder Beaufsichtigung des Betriebes oder der Arbeiter angenommene Person durch ein Verschulden in Ausführung der Dienstverrichtungen den Tod oder die Körperverletzung eines Menschen herbeigeführt hat, für den dadurch entstandenen Schaden." "Where, in the case of a mine, a quarry, a pit, or a factory, the agent or the representative, or person employed to con-

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duct or overlook the work or the workmen, through his default in carrying out the work, has caused the death or the personal injury of any man, the owner is liable for the damage thereby caused." Then Article 5 says, that the undertaker (unternehmer) or owner referred to in Articles 1 and 2 may not exclude or limit the application of the rules contained in Articles 1, 2, and 3 (3 regulates the measure of damages), to their advantage by means of a contract, that is to say, by means of a special agreement, and that contracts in contravention of this article are to have no legal effect. That is to say, by this law railway companies, mining companies, owners of factories, and owners of quarries are liable for any injury caused by the negligence of certain persons in their employment, and they may not contract themselves out of that liability; and any contract purporting to be in derogation of that liability is void. That, of course, goes a very long way further than the English law has ever gone, and I merely mention it to show the extent to which the general rule has been carried by the German law. So I think I may fairly say that, so far as my knowledge goes, no trace of the rule in Priestley and Fowler is to be found in French, Italian, or German law; and that so far as the common law of Germany has been modified by express enactment, it has been modified in a sense contrary to that rule. Then as to the rule itself. As I said before, I think it is an anomaly, and must show cause for its existence. It cannot be satisfactorily defended on grounds either of law or of general equity, or of public policy. The ground of law on which it is defended is that the servant contracts to run the risks incident to the contract of service; the objection to that is that it imports into the servant's contract a term which is not necessarily there; and there seems no reason why the law should import such a term into the servant's contract when it does not import it into a contract of the passenger or of the consignor of goods. Such a term should be left to be inserted by special contract, and should not be implied in an ordinary contract. Then, it is further said that the master's liability is strictly limited by the terms of his contract, but, first, that seems to beg the question as to what the contract is; and, secondly, it may be argued that it is not quite accurate as a statement of law, because the master may be liable under a statutory obligation or under a common law obligation as well as under a contract. Then it has been defended on grounds of general equity. It is said, with great truth, that the rule to which it forms an exception is a very hard law on the master, and that to repeal the exception from it would make the rule much harder on the master. The answer to that is, that the rule as it stands is very hard upon the servant. Then it is further said that the servant knows the nature of the risk which he encounters. I think the answer to that is, that very often he does not know it better than the passenger, and as a general rule he does not know it better than the master. He may be better acquainted with the particular risk, but he does not understand so well as the master the general nature of the risk. Then it is said further, that a servant contracts for extra wages in consideration for the extra risk. I think the answer to that is, let it be a matter of special contract. There is no reason why a servant should not contract for special wages for extra risks, but I do not think that such a contract should be implied in an ordinary contract. Then it is also said that the servant can and should insure against the risk. The answer to that is that the master can also insure against the risk. He can insure against it directly, or he can insure against it indirectly, by modifying the rate of wages, the effect of which is to make the general body of servants insure the injured person, or he can insure against it by modifying his prices, which would be to make the general consumer compensate for the injury. Then the exception is also defended on the ground of public policy. It is said that the present rule tends to make workmen more careful. It is rather doubtful whether it does, and even if it does I think it might be suggested that the repeal of the rule would tend to make the employers more careful, and would tend to make the supervision of the work by themselves and their foremen more real than it is at present. I merely mention these as heads of objection which might be urged against the rule.

Mr. *Meldon*—continued.

316. Do you know anything about the Belgian Code?—I know nothing about the Belgian Code. I have not looked at it.

317. I wish to draw your attention to the order of reference to this Committee; are you acquainted with it?—I have not seen the order.

318. It is much narrower than the considerations which you have been going into, and it is this: "To inquire whether it may be expedient to render masters liable for injuries occasioned to their servants by the negligent acts of certificated managers of collieries, managers, foremen, and others to whom the general control and superintendence of workshops and works is committed." That is the first branch of it. Supposing that the Committee should agree to that, could you suggest to us a form of words by which it could be carried out. You observe that it is to distinguish between persons who receive authority from the master, and the working people who intervene between them, and to throw the responsibility upon the masters in case any of those workmen should be guilty of negligence?—It is extremely difficult to draw, in general words, a distinction between that class of servants who represent their masters, and who may be described as vice-employers or agents, and the ordinary workmen. In certain cases it is easy enough to do so. For instance, it is possible to declare that the master, or as he is commonly called, the captain, of a merchant ship is not the fellow workman, or the fellow servant of the crew, although he now is so by law.

319. The question that I am asking you is not one of public policy, but of drafting, whether, supposing the Committee agree to that view, you could devise words that would give effect to it?—I think the objection to attempting by statute to impose the liability on the certificated managers would be this, that you would be setting up a man to be shot at, and that if you select the certificated manager he would probably be a man of straw.

Mr. *Cawley.*

320. The reference is, whether the master should be liable for his acts?—Yes, I apologise for my mistake, that is so; I think it would be possible to say that a master should be liable for the

Mr. *Cawley*—continued.

the acts of a certificated manager, but I am not quite sure that that would go far enough: it would be very difficult to select the person who should occupy that position.

*Chairman.*

321. Do you think it would be possible to say, "any person deriving authority mediately or immediately from the manager or from the owner?—The difficulty is this: You have a number of persons standing to one another in what you may call a hierarchical relation one after another.

322. Take the case of the man Wilson, where there were Neish and Jack, and a regular hierarchy, could not you use words that would more clearly express the relation of men of that class to the master, if it was thought desirable to do so?—I think it would be extremely difficult to draw the line between the sub-submanager and ordinary workmen. It is not merely a difficulty of words; the difficulty is to frame a general enactment which will fit the circumstances of each particular case.

323. Supposing that a man derives his authority through 20 men from the original master by a regular hierarchy, is not the lowest of those men still a man acting under the authority of the master?—He is.

324. Would it not be possible to express that?—I think you might perhaps use the term "superior servant."

325. Do you think that "a man who is exercising authority which is derived either mediately or immediately from the master over the person injured" would do?—I think it might be possible to devise words to that effect; but I should not like to draw the clause off hand.

324. I will ask you the same question with regard to the term "common employment," on which we are directed to see whether it can be "defined by legislative enactment more clearly than it is by the law as it is at present." What do you say as to that?—Yes, I think it could; but it would be very difficult; I have tried it myself, but I have not been satisfied with the result.

327. Could it be done in the same way in which the difficulty about libel is solved, by leaving it to the jury to say what is "such common employment" in every case?—I think that is the real solution of the question, and that is what the Scotch judges attempted to do.

328. Do you think that might be done with reference to the other question, the question of authority from the master to leave that to the jury, and not make it a question of law but a question of fact for the jury?—The difficulty is this, that the rule ought to be founded on a more general principle. The question in each case should be, Was it the fault of the person injured? and that does not necessarily turn upon the question whether the servant who has caused the injury was a servant in common employment with the servant injured.

329. I am speaking of the former part of the Order of Reference, not of common employment, and I want to know whether you think that the person who gave the order and had the power to do the mischief (supposing, unfortunately, he had done mischief) was really acting under the master or not, and whether you could leave that to the jury in the same way?—Doing so is, of course,



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open to the objection that it would lead to a great deal of litigation; that seems to me to be the only objection. It is a very difficult question to say, in certain cases, what may be done.

Mr. *Meldon.*

330. I think you stated that the doctrine of Priestley and Fowler is acted upon only in the United States and in this kingdom?—So far as my knowledge goes.

331. May I ask you, have you looked particularly to the state of American law upon the subject?—I have read some chapters of "Shearman and Redfield's on Negligence," which I believe is the ordinary American text-book on the subject of negligence; and, so far as I understand the state of law in America, it is this: They have adopted the general rule in Priestley and Fowler, but it is applied in very various ways in different States of the Union. For instance, it is stated that it is construed in a sense rather more favourable to the employer in Massachusetts, and that it is construed in a sense more favourable to the workman in the Western States. The courts of the different States have shown a tendency recently to recognise the distinction between fellow servant and foreman, or manager, which was recognised in the Scotch courts.

332. You are aware that in America the different States have a totally different state of law, and different statutes?—Yes.

333. Your attention, I presume, has not been called to any statute which has been for the last few years passed in any part of the United States, accepting the doctrine laid down in Priestley and Fowler?—I have not gone into that. I have looked up the New York Civil Code, which, you are aware, is only a draft or project of law, and which contains an Article dealing with the subject.

334. You have referred to a decision in the Mauritius case; is it quite clear that that portion of the *Code Civile* which you have referred to is not really, as decisions have been given in France, the same as the English law; you referred to these words, that the employer was held to be liable in a case in which a servant had acted *sous les ordres, sous la direction et la surveillance du commettant*; is not that exception engrafted also upon the English law; for instance, if an injury results to a servant through the acts of a fellow servant, that fellow servant acting directly at the time under the orders of the employer, would not the employer be liable in such a case as that; for instance, if an employer told a servant to do a certain thing, and an accident happened in consequence of that, the act of the servant, would not the employer be liable in such a case, as it would be owing to the direct interference of the employer?—He would, I think.

335. In the statement in which you have laid down the law, which I think extremely clear and able, there is one point which you have omitted, because I think it is the rule that where an employer interferes directly in the performance of any act, he thereby makes himself responsible, no matter to whom the negligence has caused an injury?—I think I stated that in my summary of the effect of the law, but perhaps I did not bring it out with sufficient clearness.

336. It would appear from the decision in the Mauritius case, that the law in France is exactly the

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the same as it is at the present time in England; you seemed to imply that those words which you quoted made the foreman a fellow servant in the exercise of his several duties; do not you think that it is rather the other way?—I have not read that case recently with great care, but my impression was that the limitation of the French law corresponded to the limitation of the English law, that the servant must be acting in the ordinary course of his employment, but I would not speak with confidence upon that point; it is quite possible to put another construction upon it.

337. The doctrine, as laid down in Priestley and Fowler, has been the one which has been acted upon in all the decisions from that time to the present, has it not?—Yes.

338. In many cases has not a very strong opinion been expressed by the judges, that the doctrine of Priestley and Fowler, in point of fact, was not good law?—I have referred to one expression of Mr. Justice Brett's.

339. In fact suggestions have been thrown out by the judges that if Priestley and Fowler was now to be reconsidered, the decision might be a different one?—I think you may go so far as to say that.

340. Does not it occur to you that assuming that the law is in a defective state at present, the defect arises, not so much from the principle of the decision, but by expanding the meaning of the word "collaborateur," so as to embrace every person in the same employment, whether superior or inferior to the person so injured?—It arises to a great extent from the fact that a very large superstructure of judicial law has been built up upon a very narrow foundation.

341. And that the real injustice under which the workpeople labour is the expansion of the term "collaborateur," so as to embrace almost every person who is in the position of a servant to an employer?—That is one of the evils; but you must remember this, that Lord Cairns did his best to expel the words fellow workman and "collaborateur" from the law altogether; he wished to base the doctrine, not on the fact of a person being a fellow workman, but on the fact that the contract entered into by the workman was of a particular kind.

342. I want to put in two or three words what I think is the state of the law; in the first place the master is not liable in an action by a servant for injury caused by the acts of a fellow servant, unless the master himself directly interferes in the act which causes the injury?—That is so.

342*. A master is liable to a servant for negligence in the employment of a fellow servant in the event of the master employing an incompetent servant without using reasonable care in such employment, in which case the onus of proving both the incompetency of the servant, and the negligence of the master in employing him, is thrown upon the servant?—I should rather prefer the word "selection" to "employment;" selecting, and continuing to employ, are not quite the same, but substantially that is correct.

343. Any person who fills the position of servant to a master is a fellow servant or "collaborateur" with all the persons in the employment of that master in the same business, notwithstanding that the servant is much superior in position?—That is so.

344. In illustrating the matter I would just put this question to you, and ask you what the law on the subject would be. A person employed by a firm of brewers for washing casks was killed by the falling of a wall of a malt bin; it turned out that none of the firm managed that business at all, that they were all away, and that they did not manage it directly themselves, but they had, however, employed a relative of theirs who had the entire management of the clerks in the office, and the keeping of the accounts, and the general supervision of the brewery; he thought himself a very skilful man and a bit of an architect, and he took upon himself the duty of preparing a plan and employing a builder to act upon his plan, to build a wall for the bin; it was proved that the wall was one which required a person of great scientific attainments to construct, because it was intended to keep in an immense quantity of malt; the relatives of the person who was killed took action against the brewers, and the plea of fellow servant was set up; in your opinion, under the present state of the law, was the person so employed by the brewer as general superintendent a fellow workman of the person that was killed, inasmuch as he was paid wages?—I think he was.

345. That is a very extreme case, is it not?—Yes, a very extreme case.

346. The relation of employer and servant in respect of non liability by the former for the negligence of a fellow servant is based, is it not, on a term in the contract of hiring, from which it is implied by law that the master shall not be liable?—It is based upon the implied presence of a term in the contract, that the servant shall run the risk, and on the presumed absence of any obligation on the part of the master to indemnify the servant; or a term implied on the one side and not implied on the other.

347. It is a term implied in law just as much as the term to pay rent would be implied in a lease without covenant?—No doubt.

348. So that there is no evidence that can go to a jury as to whether there was such a contract or not?—It is implied by law that the servant undertakes to run the risk; it is not implied by law that the master objects to indemnify the servant.

349. I think you stated to the Committee that, in your opinion, the exception engrafted on the ordinary law *qui facit per alium facit per se*, ought not to exist in the case of employer and servant?—I do not think that sufficient cause has been shown for its existence.

350. Do you think that in the case of miner's men in the same employ, and acting under a ganger, it would be a reasonable thing, or for the public benefit, that in such a case as that the employer should be responsible for the negligence of any one of the workmen causing injury to the other?—I think it would be very hard indeed on the master, but also I think that it is very hard on the servant, that the master should not be liable, because practically the servant has no remedy under such circumstances. If the accident was caused by a member of the gang, with whom the servant was working, and whose actions he could control, then I think you might say that the servant injured had been guilty of negligence in not controlling the persons with whom he was acting; but if it was caused by workmen working in an entirely different part of

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of the pit, then, although the master might be quite innocent, and although it would be very hard to make the master pay compensation, yet I think it would be very hard to deprive the man of all compensation, if he had been guilty of no negligence whatever.

351. If they were in the same position, would they not have very much better means of knowledge of the capability of one another, than the master could by any possibility have?—In a certain sense, yes. On the other hand, masters have the means of enforcing precautions on servants, which servants have not the means of enforcing on each other.

352. In your opinion, would not it meet the case really if the fellow, supposing the workmen were divided into classes; for instance, supposing that all of those then acting under a ganger were in the position of not being able to enter any action against the employer, or claim for injuries, and that in the same way the men in authority, or similar authority, were in another class, if they were divided in that way into classes, each class undertaking the risk of negligence with those in the same class as themselves, would not that meet this case, if it could be done?—I think very possibly it might, but I do not see my way to dividing workmen into classes by Act of Parliament; it seems to me that it would be practically impossible to frame a general enactment which would lay down such a rule as you suggest.

353-4. Could not it be left open, as a matter of fact, to be decided by a jury whether they were in the same class?—I think that might be done, and that it is only open to the objection that it would lead to great litigation, because the cases would be divided from each other by very fine lines.

355. It would be a matter for a jury in different cases, more or less, to decide?—Yes, quite so.

356. In an action against an employer by a servant for negligence in the employment of a fellow servant, the plaintiff must prove some act of negligence in the employer; do not you think that is very hard upon the plaintiff?—It is hard in this way, that it makes a man prove a negative, which is a very difficult thing to do. On the other hand, the German law, with regard to the burden of proof, goes perhaps rather further in the opposite direction than I should be disposed to go.

357. What would be your opinion of this change in the law, making the evidence of negligence which would be evidence in an action by a stranger against a defendant *primâ facie* evidence of negligence in an action by a servant, leaving it to the defendant then to show that he had exercised due skill and reasonable care in the selection of the fellow servants?—You mean putting a servant in the same position as a stranger.

358. Yes; leaving the onus of proof that the defendant had done his duty upon the defendant?—I think it would be reasonable to put him in the same position as a stranger with respect to the burthen of proof.

Mr. *Macdonald.*

359. You mentioned very fairly a case in the State of Massachusetts, in which Mr. Justice Shaw quoted the case of Priestley *v.* Fowler as the ground of his decision. I have no doubt that you have a sufficient acquaintance with many decisions in the United States in which that case was again and again repeated?—Yes.

Mr. *Macdonald*—continued.

360. And it was also repeated in the judgment of Mr. Justice Shaw?—I believe that is so; but I have not looked very carefully at the American cases.

361. Are you aware that in the State of Michigan the law is entirely different from that decision?—I was not aware of that.

362. Are you aware that in the State of New York, about the year 1869, a decision was given which entirely overturned the doctrine laid down by Mr. Justice Shaw, and that now those views are almost entirely concurred in in the State of New York?—I was not aware of that, and I am rather surprised to hear it, because the New York Code, which is of a tolerably recent date, and which therefore may be taken as representing the law of New York as it stood at the date when the code was published states the doctrine as laid down in Priestley and Fowler, but I do not know what the precise date of that code is.

363. Leaving that subject for the moment, you were asked by the right honourable Chairman, with reference to the question of management, and how far you would extend the principle to which the inquiry of the Committee is to some extent limited. Let us suppose that a colliery is divided into five different districts; each of those districts is managed by an underlooker who acts himself, he orders himself as if no other authority existed, but he acts in harmony with it may be the certified manager, or the general manager, or it may be the employer. Would you consider that the person so employed and so directing in each of those five, or six, or seven departments of the mine is a fellow servant, or "collaborateur," in the ordinary sense of the term of the fellow workmen, was much as he disposes of the labour and directs the detail of operations of the workmen in that part of the mine?—I think not; but I think it would be very difficult to define the position of such a person by Act of Parliament. I think that that is just the case in which it should be left to a jury whether he is or is not a fellow workman.

364. You are quite clear, as I understand, that such a person could not be construed to be a fellow workman, seeing that all and everything was under his immediate direction?—What I should venture to say is this: that he ought not to be considered as a person who might be controlled by the person injured; that is the only rational foundation of the rule about fellow workmen. Of course in a sense he is a fellow workman.

365. With regard to common employment and common risk, let me put this case to you; Lindsay, who caused the death of the two men, Reid and Maguire, in the Bartonshill Coal Company case, was an engineer; he was lifting these miners from their work on which they were employed during the night, and he carried them over the pit top, and they were killed; I am referring now to the principle laid down of common dangerous employment; do you think that there was any community of employment existing between those two men?—I think there was a community of employment, but not such as to justify the application of the rule.

366. There was a community of employment certainly;

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certainly; they were under one employment, but there was no community of a common dangerous employment, was there?—In a sense, yes. It is rather difficult to answer the question in the form in which you put it; I should prefer to put it in this way. There are two classes of cases to which I think the term "common employment" and "fellow workman" is not properly applied for the purpose of the rule in Priestley and Fowler. One class of cases is where the servant causing the injury is the superior in rank to the servant who is injured. The other class of cases is where although the two persons are technically in the same employment, yet they are employed under such circumstances that they know nothing of each other, and they have no power of controlling each other. Perhaps the best illustration of that class of cases is the case where a painter employed by a railway company to paint a shed near the railway, was killed in consequence of the negligence of a platelayer employed on the railway. How could the painter know anything about the platelayer, or control his acts?

367. That is very true, but do you think that that is right in principle. I am not saying anything about the law?—I say that that is one class of cases to which I think the law should not apply.

368. You do not say that that class of decisions is a right decision?—By the English law, it is right.

369. I am asking your opinion?—I think it is wrong in principle.

370. In the case of Reid and Lindsay, could the two men Reid and Maguire have inflicted any injury upon the man Lindsay; from the nature of their employment was it possible they could have inflicted any injury?—They might have blown him up by their carelessness.

371. How; they must have deliberately entered his engine-house and blown him up?—I am afraid I am not sufficiently familiar with all the facts of the case to remember how it was; I do not remember where Lindsay was at the time.

372. You referred, did you not, to the case of Wilson *versus* Merry?—Yes, that is the leading case on the subject.

373. In that case did the man Neish, whom the widow Mrs. Wilson sued, ever hold the company to be responsible; did he employ all the men?—I really do not quite remember whether he did or not.

374. Did he dismiss them all?—My impression was that he had a limited power of employing and of dismissing; I really do not remember.

375. Did Mr. Robson, the person who was held to be the manager, know anything of the colliery at all?—I do not think it was shown that he did.

376. Would it surprise you if I told you that when asked if there was coal in the pit he did not know that coal existed in the pit?—I did not hold a brief in the case, and I know nothing of the facts beyond what appears in the report.

377. Do you know that Neish employed the person Wilson?—So I understand from the report.

378. He stood, did he not, in the relation to him of employer?—For certain purposes, no doubt.

379. Do you know of any other employer?—There was the person who employed Neish.

Mr. *Macdonald*—continued.

380. Do you know Jack?—I only know what I stated to the Chairman. I am bound to assume that the statement of the facts as made by Lord Cairns is correct, and that statement was as follows: "The general manager of their works in Lanarkshire was Mr. Jack. The manager of the Houghhead Coal-pit underneath Jack was John Neish; and subordinate to Neish was a man named Bryce, who attended to the underground operations. One Neill Robson, formerly a mining engineer, was a partner with the respondents, and it was under the general direction of the respondents, and of Robson and Jack, that the work of the Pyshaw seam was commenced." That is all that I know of the facts.

381. I have to ask you this, do you think that Neish in the circumstances was a fellow workman?—I am bound by the decision of Lord Cairns that for legal purposes he was.

382. Would you regard the person who employs and who dismisses, and purchases the material for the mine, and who does everything in connection with the mine as a fellow workman?—I have already said that I would not for the purposes of this rule.

383. You were asked a question with regard to a workman being employed, and causing an injury to another workman in another part of the mine; if an employer employs a person without any skill, and places a lamp in his hand, who does not know a lamp, and thereby causes serious injury to his fellow workmen; if that person has been employed by the employer or agent of the employer, do you think that the owner should be responsible for having employed such a person?—I think by the law as it now stands, he would be responsible, because by the law as it stands, the employer is bound to use due care in the selection of his servants, and if it can be shown that he did not employ due care to select a competent servant, he is liable.

384. But if he pleads that he has committed the care of his entire work to another person, what does Lord Cairns say in that matter?—In answering the question you put I must distinguish between two alternatives. If an incompetent workman were appointed by the person sued, that person would be liable for negligence in appointing him, but if that person had delegated his power of selecting and appointing servants to another, he would not be liable. In the second case he would not; in the first case he would.

385. If a person employs directly ten men, and has the personal superintendence of them, is he liable for every order that may lead to the injury of any one of those men?—Yes.

386. Can you show me any reason why when a man employs a thousand, and delegates it to another as superintendent, he should not be liable for the action of the man that he delegates it to?—The reason which is assigned by the law for the distinction, and which is, I think, for certain purposes sound, is this, that in the one case the employer is personally negligent, and in the other he is not. That is a sound reason, though I think there are stronger reasons the other way.

387. On what does the doctrine of the responsibility of the owner to the ten men entirely rest?—On the same ground that his responsibility to outsiders rests, that is to say, that he is responsible for the consequences of his negligence.

388. Do you see any reason, if he appoints in his

Mr. *Macdonald*—continued.

his place another person to manage for him and direct for him, when he takes the profits of the concern, why he should not be responsible for his acts?—If you ask me the reason why I think this distinction was established, I think it is this: The law which makes the person liable for the consequences of an act with respect to which he is personally innocent, is a hard law, although I think it an expedient and just law. The courts did not wish to strain that law further than was absolutely necessary, and therefore they drew a distinction between the case of passengers and outsiders, and the case of a servant, and they said, "We will apply this rule as far as we are compelled to apply it, but we will not go a step further." That I believe to be the historical reason for the distinction.

389. I ask you what is the reason for the distinction?—I have already said that I think the distinction unsound.

390. You have told us that in the case of Wilson and Merry with reference to the winder, the employer incurs no known risk; when did we first hear of known risk?—That I cannot say.

391. Did we ever hear of known risk to an employé on entering entering a common employment prior to the case of Priestley and Fowler?—It is difficult to prove a negative, and I cannot say.

392. Have we any account of it?—I have not read all the law books or cases, but I do not know that we have.

393. Is there any such thing in Scottish law prior to 1855?—As I stated, the Scotch judges repudiated the doctrine of Priestley and Fowler; they said that it did not form part of the Scotch law.

394. We have heard a good deal of dangerous employments being paid more in consequence of the risk; have you turned your attention to that subject?—I know it is stated that the reason why a servant does not recover is, because he is paid extra wages for the risk he incurs, and if he does so, I think that is a very good reason why he should not recover.

395. Has the question of the rate of wages anything whatever to do with the question of the payment for risk?—It has to this extent. I think that in certain cases a person is quite justified in undertaking an employment involving extra danger in consideration of the payment of extra money.

396. That is a different point; my question had reference to ordinary employment?—I suppose it is also true that miners also get higher wages, partly in consequence of their employment being more disagreeable and more dangerous. I suppose that is true to a certain extent.

397. As you have selected miners, I will ask you a question with regard to them; are you aware what miners' wages are?—That I cannot say.

398. Would you be surprised if I told you that in Somersetshire the wages are something like 3 *s.* 6 *d.* a day in the coal mines?—It is possible.

399. Do you know whether or not the wages in South Wales, and also in North Wales, amount to more that 4 *s.* a day?—I really know nothing about the rate of wages.

400. Do you know anything about the trade of a joiner?—Very little.

401. Do you know what his wages are?—Not the least.

Mr. *Macdonald*—continued.

402. Do you know that he has 5 *s.* a day?—I am more competent to inform you about the rate of counsel's fees than about any other kind of of wages.

Mr. *Tennant.*

403. May we understand you to express it as your opinion that there should be no difference in the liability of an employer with regard to his own workpeople and with regard to third parties?—I think it would be better to leave the difference of the liability of an employer to his servant, and the liability of an employer to third persons, to be regulated by express contract, and that that contract should not be made by law.

404. In other words you think that the liability should be the same?—Yes, in the absence of contract.

405. Then you would allow special contracts to be made between masters and workmen in case of danger, or in any other special employment?—Quite so, so far as the contract does not infringe the law, of course.

406. Supposing that the law were, if this Bill might possibly pass in consequence of this inquiry, that the masters were to be responsible for the acts of particular employés under them, would you be of opinion that a master should be entitled to make a special contract with his workpeople in the case of dangerous or any special employment?—I could conceive the possibility of such a power being abused, but at present I think it would be desirable to leave the right of contracting entirely free.

407. In that case would you make the fellow workman, or the agent who was the immediate cause or the proximate cause of the injury responsible to the person injured?—I believe he is it present.

408. Could the person injured sue the agent or fellow workman and leave his master out?—I believe he could, but the law is not quite as definite on the subject as it might be; I believe he could sue the person who was the proximate cause of the injury.

409. Could he sue both?—At present he could sue both, I believe.

410. Could he do so concurrently?—That is a matter of procedure; my impression is, that under the present procedure he could sue them concurrently.

Mr. *Meldon.*

411. In an action of tort you could join as many defendants as you liked, could you not?—Yes.

Mr. *Tennant.*

412. In such a case as that, supposing that they were joined together in an action, would the master be responsible if he were able to pay, and the agent or the fellow-workman escape scot-free; if they were not able, would the master have to pay the whole?—I am not quite sufficiently familiar with those forms of action to be able to state positively; but my impression is, that you can proceed against whichever you please, against either or both; you would select your defendant, and you would naturally select a solvent defendant.

413. I understand you to say that you consider the doctrine of liability at present not to be in a satisfactory state?—I do.

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Mr. *Tennant*—continued.

414. Taking the general question of liability, do you think, as a question of abstract natural justice, that an employer should be responsible for injury to anyone for things over which he had no possible control?—Yes, I do; I admit the hardship of the rule, but I think that it is salutary on the grounds of public policy, and the justification of it is this: a man carries on an employment from which he derives a great profit, and by which he subjects other persons to great risks; it is only fair that the risk should bear some proportion to the profit.

415. If an accident occurs in direct violation of the express orders of the master, what do you say then?—There are orders and orders.

416. I assume that this is an order to which there can be no exception taken, and that an accident occurs through an express violation of that order, would you then say that the master ought to be held responsible?—I should like to give in answer to that an illustration from the well known cases of omnibus nursing. A great many accidents happened from omnibuses racing against each other, and what was called "nursing" each other. I believe it was proved in almost all those cases that the omnibus proprietors had drawn up and given to their drivers a most excellent and admirable code of rules directing them, under no circumstances, to race with other omnibuses, but it was said that there was a general impression amongst the omnibus drivers that it would be better for them if they broke those rules than if they kept them. That is the class of rule that I was thinking of.

417. Take another case: assume that it is one of the express orders in a pit that you are not to work with a naked light, and one of the workmen, or even one of the deputies, who is superior to the ordinary workmen, takes the gauze or netting off the lamp and exposes the naked light, and an explosion occurs, would you say that the master should be responsible for all the consequences of that explosion?—Of course; he is so at present as to outsiders. Supposing it had been a powder magazine near several large houses, and that a servant in defiance of express orders had gone into that magazine with a naked light, and had blown up a number of the neighbouring houses, I take it that the employer would be liable under those circumstances to pay compensation.

418. You think that in such a case as that the the master ought in natural justice to be held responsible?—If he was not made responsible you would give no remedy at all to the innocent and injured person.

419. Had you not better have no remedy for the injured person than punish a perfectly guiltless man for it?—I should say on grounds of public policy not.

420. You think the owner had better be made to pay, although he can in no sense be held responsible for it than that the injured persons should not get compensation?—That is the law of all civilised states. In some cases the liability of employers is limited by Act of Parliament; there is a limitation, for instance, in the case of shipowners, but I do not know any law of a civilised country which relieves an employer from liability for accidents of that kind. Of course it must be assumed that there is negligence of some kind, and that it is not a case of mere accident.

421. Negligence by somebody but totally unconnected with the employer?—Yes, where the employer is quite innocent.

Mr. *Tennant*—continued.

422. You have been asked to define the term "common employment," but I understand you to say that in this last case in which Lord Cairns gave judgment we might almost understand that the doctrine of common employment had altogether exploded; that he seemed to put it on one side and went upon the point of contract, expressed or implied?—He did his best to explode the doctrines in that form, but it still lingers on in the courts. I find it referred to in the last reported case.

423. Then the doctrine laid down by Lord Cairns has rather been ignored in subsequent cases?—No, it is not quite true to say that. What Lord Cairns said was, that common employment is merely a particular example of the more general principle on which the rule rests, but is not the foundation of the rule itself. However, the late decisions seem to have gone much as before upon the term "common employment."

424. The Right Honourable Chairman called your special attention to the terms of reference to this Committee, which shows the liability of the masters to those whom they have some sort of control or superintendence over; did I understand you to say that you would go beyond that yourself?—I should.

425. Assuming that you were to attempt to define it, you would find great difficulty, and you would prefer almost to leave it to the jury?—I think it would meet the justice of the case better to leave the question to the jury.

Mr. *Shaw Lefevre.*

426. As I understand you, you would propose to alter the general law, and then allow the employer and the workman to contract themselves out of it?—I would.

427. Would not the effect of that be that all employers would make it a condition of employment that their workmen should contract themselves out of it?—That might be so. As I said before, I think that at present liberty of contract should be allowed, because I do not think that freedom of contract should ever be interfered with until a strong proof has been afforded that that power has been abused; it is possible that it might be abused.

428. Take the case of railway companies; one of the strongest cases for the amendment of the law is as regards workmen employed by railway companies; do you not suppose that railway companies would universally contract themselves out of such a law if it was changed?—It is possible that they might. Yet even if they did, I think the alteration would have this advantage, that the workman would blame the contract, whereas at the present he blames the law. It is much better that he should blame the contract than the law. I think if it was shown that the power of contracting was abused, it might possibly be necessary to go so far as the German law has gone, which prohibits a person contracting himself out of his liability, but I would not go so far at first.

429. Would you allow the workmen and the employers to contract themselves out of the liability for their personal negligence?—I am not sure how far they can at present.

430. Can they do so now?—I do not think they can.

431. It is the fact, is it not, that under the law as it now stands the employer is liable if he has been

Mr. *Shaw Lefevre*—continued.

been personally concerned in the negligent act?—Yes, if he has personally taken part in the work.

432. Can he by contract with his servant beforehand contract himself out of such a liabilty?—My impression is that he cannot, but I should not like to state that positively.

433. Would you propose that for the future he should be allowed to contract himself out of the liability?—I would not alter the power to contract, one way or the other.

434. You would enable him to contract himself out of the liability which is to be increased under your proposal?—Yes; I said that I would put him in the same relation to the workman as the carrier is to the passenger. With certain limitation, I believe the carrier cannot contract himself out of liability for his personal negligence to passengers, but he can, and every day does, contract himself out of the liability for the negligence of his servants. That is done in the case of charter parties, bills of lading, and so on; though of course, as you know, the Legislature has found it desirable to limit his power of contracting in certain respects.

435. Supposing that your proposal were carried out, and that the general liability were extended, leaving the employer still to contract himself out of it, and still leaving him subject to liability in case of personal interference, would not that tend to induce employers still more to do their work through agents, and then to contract themselves out of liability to their servants?—I am not quite sure that servants are not strong enough to regulate their own contracts; it has not been shown that they are not.

436. Take the case of railway companies; do not you think that they are quite strong enough to enforce any rule of that kind upon their servants; what chance would there be for any individual servants of a railway company to enforce their own contracts upon the railway company?—I am willing to go as far as you wish to go in restricting freedom of contracting under certain circumstances, but I do not wish to go there at once; I think that before freedom of contract is interfered with it must be shown that that freedom has been abused.

437. In your opinion is it necessary to go to the full extent of your proposal at once, would not it be possible to stop where the Scotch cases, as I understand, stop, namely, to make the employer liable for the acts of his principal agent, and also for the negligence of those servants who were totally unconnected with other servants?—That is to say, to leave the question of fellow servant or not as a question to the jury. I think that might be done.

438. In such a case would you think it necessary to allow an employer to contract himself out of such liability?—I should for the present allow him to contract as he pleases.

Sir *Daniel Gooch.*

439. Do you know of any cases in which compensation was paid, before the case which you have mentioned in 1836?—No. It is stated that there was no such case before it, so that it is fair to say from all that appears that the question had not been raised before that decision.

Mr. *Eustace Smith.*

440. You mentioned one or two cases that had come under the French law, and you also told us what the French law was; those cases were a good many years ago; do not you think that there have been since the development of railways in France any cases of actions for damages against railway companies?—I cannot tell you. The authority to which I referred was the edition of 1855 of the "Codes Annotés," by Sirey.

Mr. *Eustace Smith*—continued.

441. You do not happen to know whether it is the practice in France for railway companies to pay damages for accidents to their servants?—That I cannot say.

442. Am I right in understanding you to say that it is not a principle of the English law that the employer should warrant his plant?—It is not a principle of the English law that the employer should warrant his plant, as between himself and his servant, or as between himself and outsiders.

443. I do not know whether your attention has been called to the Merchant Shipping Bill, which has lately passed through both Houses; you consider it, do you not, quite a new principle of English law that a shipowner should be called upon to warrant his plant to his servants?—Are you quite correct in stating the law as you have stated it?

444. I mean as to his giving a certificate of seaworthiness?—I am not sure that you are stating the effect of that clause quite correctly.

445. I should be glad if you would tell me in what way I have stated it incorrectly?—Under Clause 5 of the Merchant Shipping Bill the shipowner undertakes that he and certain specified agents and servants of his will use all reasonable means to insure seaworthiness, but that is a very different thing from warranting seaworthiness. The distinction is this: a shipowner does, in the absence of special contract, warrant the seaworthiness of his ship as between himself and a shipper of goods, but, as you know, he does not warrant the seaworthiness of his ship as between himself and the passengers. This clause, as I understand it, places the shipowner in the same relation towards his crew as he stands in at present towards passengers, but not in the same relation as he stands in towards shippers.

Mr. *Tennant.*

446. I think you said that according to the law of Prussia the employers are responsible for the acts of their immediate agents?—The law of Prussia is, I believe, regulated at present by the Act of 1871 which I quoted.

447. Did not you tell us that the law of Prussia absolutely prohibited persons contracting themselves out of the Act?—In certain specified industries it does, as in the case of mines and quarries, and in, another word which I translated "pits," and in the case of railways and factories.

448. In Prussia is the liability limited to the immediate agent; or is it carried further?—It is limited to the representative of the master, "Ein Bevoll mächtigter oder ein Repräsentant oder eine zur Leitung oder Beaufsichtigung des Betriebes oder der Arbeiter," the person employed to conduct or overlook the work or the workmen.

449. Then an employer by that code cannot contract himself out of this liability?—No, he cannot.

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Mr. *Knowles.*

450. With regard to the case of the overwinding of a man by the engine man, about which you have been asked, perhaps you did not thoroughly understand that, first of all, a miner could not get to his work if it was not by means of the engine, and the engine, of course, could not work without the engine man, and when he got to his work at the bottom he could not come up again without the same appliance; in the event of his being wound up and injured, as the honourable Member put it to you, do you not consider that that is a common employment between the engine man and the miner?—Can the man who is wound up exercise any control over the man who winds him up? I think that is the test; can he make him more or less negligent?

451. He could not work at all without the engines; he could not go down the shaft, or come up again if he went down?—In a certain sense the person wound up is a fellow workman with the person who winds him up, no doubt, but should the person who winds be treated for certain purposes as one with the person who is wound up, so that if an injury is caused by the negligence of the former, it is treated as the negligence of the latter, and the latter cannot recover; that is really the question.

452. They are both employed on a common object, the one mining coal, and the other winding coal, and the winding the man down first of all into the shaft when he goes to his work, and winding him up when he returns; how could you sever the common employment in that case, because the one seems to be quite as essential as the other?—I think it is very difficult, and that is why I think that the test of common employment is a fallacious one. The proper test is whether the person injured could, by the exercise of due care, make the person who caused the injury more careful.

453. Of course, where a case of that sort occurs, it generally smashes a lot of valuable property, and as the master employed a very careful engine man, and believed him to be quite fit for his duty, in that case if he neglected his duty, and injured the other man, would you hold the master responsible for damages?—If the miner had been a stranger, the master, although perfectly innocent, would be liable.

454. But the miner is not a stranger, he knows, as well as his master, all about the shaft and the engine, and that there is no other means of ascending, or having his work brought out, except by the engine?—Is not that the case with a passenger; a passenger is not bound to go by a particular train.

455. The one does it for hire, and the other pays to have it done for him?—There is that difference, no doubt.

456. Could you draw no distinction between a railway passenger and a railway servant, one of whom is paid for his work, and the other pays to be conveyed?—No doubt there is that distinction; the question is, what the servant contracts to do, and what risks he contracts to run. I see no reason why he should not contract to run all the risks incident to the service, if he does it with his eyes open, and makes a special contract for that purpose.

457. Take the case of a railway guard; it is a very unusual thing that a railway company will employ a guard who has not worked on the railway in some capacity or other probably he has risen from a labourer to a pointsman, from a pointsman to a breaksman on a coal train, and then from that to a passenger train as guard; would you not conceive that when that man arrives at that point he knows something about the dangers that he is to incur, and that he knows the duty connected with all of them, and if he should make a mistake, he knows that he is liable for those mistakes, and for those accidents?—The question is, does he really know more than an ordinary passenger. I know that when I am travelling by railway, I am exposing myself to every kind of risk.

458. But you do not know, from actual practice, the actual facts; it is only your association with what you have read?—And partly experience.

459. There is a great deal of difference, is there not, between a man who knows from actual facts, and another who simply surmises it from theory?—But I do not surmise it by theory. I know from actual experience that you may run great risks on a railway.

460. Do you think that there is no difference from actual experience between a passenger and a workman on a railway?—For practical purposes a passenger by railway knows just as well as the workman can do, the dangers that are incurred in railway journeys.

Mr. *Knowles*—continued.

Mr. *Stanhope.*

461. You have been speaking of payment for risks, will you take the case of two brothers, one works above ground, say at a farm, and gets 2*s.* 6*d.* a day for 10 hours' work, and the other brother works below ground, in a pit, and gets from 7*s.* 6*d.* to 8*s.* or 9*s.*, or 10*s.* a day, for eight hours' work, and we will say that the one employment does not require more skill than the other, do you think that the presumption would be that a part of the higher payment was for the increased risk?—I think it would be better to have no legal presumption on the subject, but to leave the matter to be determined by the express terms of the contract. If a miner chooses to contract to run extra risks for extra wages, by all means let him do so.

462. The point that I wished to put to you was, that it has been contended that there is no consideration of risk in a miner's employment?—That is not my view.

463. That being the case, would not it be the natural presumption that a part of this higher rate of wages, although it is not expressed, is probably due to the increased risks of mining underground as compared with farming above?—I should think so, but I should not wish to have it appear as a legal presumption, which is a different thing.

464. You were asked with regard to shipowners' liability, supposing that a shipowner sends a ship to sea in a seaworthy state, and during the voyage one of the crew scuttles that ship and causes the remainder to be drowned, do you think that the master ought to be liable for compensation to the relatives of those who were drowned in that way?—You see he is liable to the passengers, and I do not quite see why he should not be liable to the crew. Of course if there was any reason to believe that the other members of the crew could have controlled the guilty member, then I think it is very desirable that they should not recover compensation,

Mr. *Stanhope*—continued.

pensation, but if that is not so I do not see why they should not.

*Chairman.*

465. In that case the owner would not be liable and would not take it out of this rule?—I do not think felony makes any difference under Lord Campbell's Act.

Mr. *Cawley.*

466. Going back to the order of reference, I think you understood that you were to consider the case of certified agents; I just want to draw your attention to the case of delegated agency; it strikes me that in the course of any legal proceedings there would be a question of the authority to delegate?—Yes.

467. That is to say, if the agent appointed a sub-agent the question might be asked whether he had authority to delegate his own authority?—No doubt that question would be raised.

*Chairman.*

468. According to your view would this satisfy you if the Committee made a report within their order of reference that any contract limiting the liability of the master to indemnify for injury by negligence should be a question for the jury; do you think that that would meet the case according to your view of it?—The question whether there was or was not a contract on the part of the master indemnifying the servant should certainly be a question for the jury. I think that that would be quite fair.

469. Before you get rid of any question about common employment, you would come to Lord Cairns' view?—Yes, but I think it would not be safe to trust exclusively to Lord Cairns' view of the ground of liability. It would be necessary to deal at the same time with the meaning of the term, "common employment."

Mr. *Meldon.*

470. You were asked by the right honourable Member as to admitting freedom of contract between the employer and the servant, and your answer was that it would lead to inconvenience; is it not the fact that the common law at present existing, provides for cases where parties, such as railway companies, choose to insert conditions providing against liability for negligence, and that such conditions as those have been held to be unreasonable and not valid?—The statute law rather than the common law.

471. There would be no difficulty, would there, in applying the same principle to cases of this description?—You are aware that the statute to which I refer has led to a great deal of litigation, and is not quite satisfactory in form; but I think if circumstances occurred that made it necessary to apply the same principle to cases of this description, there would be no difficulty in framing a rule on that principle.

472. We should be in a position to legislate upon the construction, but there would be no difficulty in framing a rule, so as to make it an unreasonable condition that a person shall not be liable for his own negligence?—I think not.

473. It would be a very reasonable thing that a man should contemplate that he would not be liable for the debt of another which had been occasioned through his negligence?—There is always a difficulty in the use of the words "reasonable" and "unreasonable"; when you leave "reasonable" or "unreasonable" as a question for the judge or the jury in each case.

Mr. *Meldon*—continued.

Mr. *Shaw Lefevre.*

474. Has it ever been attempted on the part of railway companies to contract themselves out of the liability for their passengers, in case of accident through negligence?—I do not suppose that a railway company would ever try to contract themselves out of the liability for personal negligence.

475. I am talking about negligence of an agent?—Yes, certainly, they have attempted that.

476. Has that been held to be unreasonable?—Yes, it certainly has.

477. The honourable Member opposite, I understood, suggested that the same rule should be applied to the law amended as you propose, that it should be open to courts of law to decide whether a particular contract was unreasonable or not?—Yes, I said that a law of that kind might be framed.

478. Would not that really raise the whole question in another form, namely, whether such a contract on the part of the contracting parties to get rid of the liability, is unreasonable or no?—That is the objection to the whole of that class of statutes; they leave the individual judge to determine whether or not a particular kind of contract is reasonable.

479. Would not that raise the general question, whether it is unreasonable on the part of the employer to contract himself out of such a liability?—It would.

480. And one case would decide practically for the whole country, whether it is unreasonable on the part of the employer to contract himself out of such a liability?—Just as under the Railway and Canal Traffic Act.

481. And there would be no difference in the cases, because if one employer could contract himself out of such a liability, another could?—Yes, and then you might have to pass an amending Act.

482. Therefore it is really a proposition as to whether it is expedient that the Legislature should leave it to be determined by a court of law, or should determine the question themselves?—No doubt.

Mr. *Cawley.*

483. With reference to your answer about railway companies contracting themselves out of the liability having been held to be unreasonable, is it not the fact that a case was decided very recently in which a company did as they invariably do, in granting a free pass, made it a condition, stated on the back of the pass, that they were not liable for any injury, and is it not the fact that in the case which has been recently decided, the court held that that was a condition, and a good condition, and that the man was not entitled to compensation for injury?—That is quite possible, although I do not remember the case.

Mr. *Shaw Lefevre.*

484. In that case he was not a passenger for hire?—No.

485. There never has been a decision, and I do not think that it has been attempted on the part

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Mr. *Shaw Lefevre*—continued.

of any railway companies to make it a condition that in the case of carrying passengers for hire, they themselves should not be liable for accident?—I do not think that they have ever gone quite that length.

Mr. *Macdonald.*

486. You have stated that you would allow it to be a matter of contract between employer and employed as to the liability?—I would.

Mr. *Macdonald*—continued.

487. Do you not think that that would lead to great recklessness on the part of the employers on the one hand in the management of the works, and on the part of the workmen on the other hand running great risks, and would it not be dangerous to the community if such a law was passed?—It might; and in that case, but in that case only, I would limit the right to contract.

488. Do you think that that would be the tendency?—I think it might possibly be so.

Mr. Joseph Brown, Q.C., called in; and Examined.

Mr. *J. Brown*, Q.C.

*Chairman.*

489. You are a Queen's Counsel, are you not?—I am.

490. Have you given a good deal of attention to the law of liability of the master for the conduct of the servant?—Yes, I have.

491. Have you also paid any attention to the more particular subject which is before this Committee?—Yes, I have paid some attention to it. I was present when it was discussed at a meeting of the Social Science.

492. Will you have the kindness to give us your view first of the general law of liability of master and servant, briefly?—Yes, the general law is this: The law holds the master generally responsible for the negligence of his servants committed in the course of their employment to outsiders, to use a convenient phrase, but in the case of mischief arising to the fellow servants from the negligence of another fellow servant, the law, generally speaking, holds the master exempt from responsibility. That exemption, however, does not apply to any case where the master is personally in fault; where he has not used due care to provide proper materials, or where he has not used due care in the selection of competent fellow servants. If a master, for example, was to employ a child to do any dangerous work, or to make fireworks, or anything of that sort, he would be held responsible for any mischief the child did, but not so if it was a competent fellow servant that he employed. Those, I think, are the general principles applicable to the case.

493. What is your opinion with regard to the general law of liability of a master for a servant?—My opinion is that it is essentially unjust. I have written to that effect many years ago, long before this Bill was introduced into Parliament, expressing my views at some length upon the subject. Upon turning it over in my mind and examining the authorities so far as I could, I was unable to discover on what principle of justice it rested that one man should be answerable for another man's sins, excepting always of course in cases of contract, which are different affairs altogether; but I rather fancy that it has generally been rested upon principles of policy. I do not think myself, however, that policy had anything to do with the original introduction of it in our law. Many years ago when I wrote upon it I took the trouble to trace the history of that new law, and I found that there was no case whatever, prior to the one by Lord Holt, in the reign of William the Third, when the master was held responsible for the negligent acts that his servant committed in the course of his employment. Lord Holt appears to have been the first who laid down this law. He was a great judge no doubt; but

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before that time, there is reason to believe, the law was the other way. I got my clerk to make an extract from two cases which, I think, show when the law was altered. One is the case of Kingston against Booth, in "Skinner's Reports," page 228, which was in the time of Charles the Second, where it was held: "If I command my servant to do what is lawful, and he misbehave himself or do more, I shall not answer for my servant, but my servant for himself, for that it was his own act; otherwise it was in the power of every servant to subject his master to what actions or penalties he pleased. Thirdly, if I command my servant to do a lawful act, as in this case, to pull down a little wooden house (wherein the plaintiff was and would not come out, and which was carried upon wheels into the land to trick the defendant out of possession) and bid them take care they hurt not the plaintiff, if in this doing, my servants wound the plaintiff, in trespass of assault and wounding brought against me, I may plead not guilty, and give this in evidence, for that I was not guilty of the wounding; and the pulling down the house was a lawful act." That was in Charles the Second's time. When you come down to Lord Holt's time, in the first Lord Raymond there is an anonymous case to this effect: "The servants of a carman ran over a boy in the streets and maimed him by negligence, and an action was brought against the master, and the plaintiff recovered. The servants of A. with his cart ran against the cart of B., in which there was a pipe of wine, viz., sack, and overturned it, whereby the sack was spoiled and ran into the street; an action was brought against the master, and held good by Holt, Chief Justice at Guildhall." That, I believe, after taking considerable pains and research, was the first case in which the master was held responsible to an outsider for the negligent act of his servant. No reason for it is given. In looking through the Jurists as I have done with regard to this matter many years ago, it seemed to be the opinion of many that it came from the Roman law, which held the *pater familias* responsible for the negligence of his slave or of his child, but always subject to this limitation, which made a very material difference, that the *pater familias* might rid himself of the responsibility by giving up the slave or the child to the injured party; the average price of a slave seldom exceeded about 20 *l.*, of our money; it was a very moderate limitation of liability.

494. Giving up the child was a clear gain, I suppose?—That giving up the child was put an end to by Justinian, but giving up the slave still remained. When that principle was adopted into our

*Chairman*—continued.

our law, no limitation of liability was imposed; but down to Lord Campbell's time, and until the railways came up, it was not a matter of very serious consequence, as the damages recovered were usually small in amount. But when Lord Campbell's Act was passed, and railways were introduced also, the liability of the master was so enormously aggravated that it extended in some cases to tens of thousands of pounds. That made it a very different matter indeed from what it was originally when Lord Holt first laid down the rule. My impression is, that if the rule is to be maintained at all, it must be defended rather as a rule of policy than a rule of justice. If it is put upon the ground of policy, I certainly think, and have written to that effect, that there ought to be a moderate limitation to the amount of liability. But I have not been fortunate enough to persuade the public yet, I believe, to adopt my view. I know it is an unpopular view, but it was one which I came to after a great deal of consideration.

495. Then your view is not exactly the subject before us; will you give us your opinion as to the present law with reference to the liability of master and servant in such cases as are referred to this Committee for workmen and persons of that kind?—I have heard it said that the limitation of the master's liability to a servant for the acts of his fellow servant shows an unwillingness on the part of the judges to extend the general rule of law as to the liability of the masters.

496. From a disapprobation of the general law?—Yes, I am not sure that some feeling of that sort may not have had something to do with it, but that is not the ground on which it is put in making the distinction.

497. What ground would you consider it to rest on?—In the last case, which I argued myself, the case of Lovell and Howell, in the Common Pleas, which occurred about six months ago, it was put on the ground that when a servant enters an employment, he undertakes the risks which are incidental to that employment, that is to say, not that he expressly undertakes them, but they are from necessity the usual ones implied, and he undertakes those risks in consideration of such wages as he receives; and one portion of those risks is the risk arising from the momentary negligence of a fellow servant, who is competent, as a general thing, and where the master is guilty of no negligence in employing him. That is the ground on which it is put in our books, and not only in our books, but it is put on that ground also in the American books. I had the curiosity to refer to a leading American case on the subject before I came here, which is Farewell *v.* The Boston Railroad Corporation, in the 45th volume of the "Massachusetts Reports," where it is put distinctly on the ground of its being part of an implied understanding between the master and servant at the time he enters into the employment of the other. I looked through the French authorities on the subject, and I found that the French courts have decided the same way as our courts; that is to say, that the master was not responsible to his servant for the negligence of a fellow servant, who he had reason to suppose was competent; and on the very same ground, that is to say, the judges considered that it was an implied term of engagement between the parties that he should run the risks incidental to the employment; but I find that



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decision was overruled by the Court of Cassation, on the ground that it was inconsistent with an express article in the Code Civile with reference to the responsibity for "*délits.*" The number of the Article is 1,384. That concurrence of opinion of the English judges and the American judges (who cannot be suspected of any partiality to the master, seeing that they are usually elected by the servants), and the French judges, I think, raises a strong presumption that the exemption, such as it is, rests upon the reasonable interpretation of the implied terms of engagement between the master and servant when the one enters into an employment attended with certain hazards.

498. Then naturally, your views approve of the conclusion that was arrived at?—Yes, I do.

499. Are you satisfied with the reasoning?—I think it is substantially a sound reason. If you ask yourself this question: Suppose a man enters into a gunpowder mill to make gunpowder, does he, or does he not *ex necessitate* agree to encounter risks incidental to that manufacture? I do not see how the question can possibly admit of more than one answer; and certainly the same answer must be given if you ask yourself the same question as to a man who engages to drive an engine on a railway, a man who engages to work in a colliery and a thousand other things, where people work on scaffolds as bricklayers and so forth. I do not see how it can be possibly answered in any other way but that; you have a right to say he clearly undertakes the necessary risk incident to the business. When you come to the question: Is the risk arising from the carelessness of a fellow servant, a necessary risk? I really do not see how that admits of more than one answer, because in all those cases the railway company and the colliery owner, and the gunpowder manufacturer, they cannot work except through the medium of servants; and if they did attempt to do the work themselves, they would aggravate the risk 20 times. Of course they would not do nearly as well as people who are used to it. Therefore it is a necessary risk that a man entering any of those employments embarks in when he undertakes the employment for wages. That is my general view of the matter.

500. Do you think that this contract agreement which is set up actually, has any existence?—It has no more existence in that case than in any other case of implied contract. For example, if I go into a shop and order some goods to be sent home, there is no actual contract, but the law immediately implies a contract that I will buy, and the other man will sell and deliver the goods, and I will pay him just like all other cases of implied contract.

501. With regard to what is referred to this Committee, have you seen the order of reference?—I have seen it.

502. Will you be so good as to read it, and tell us what you think of it, and what answer you would make to it?—It is, "Whether it may be expedient to render masters liable for injuries occasioned to their servants by the negligent acts of certificated managers of collieries, managers, foremen, and others, to whom the general control and superintendence of workshops and works is committed, and whether the term 'common employment,' could be defined by legislative enactment more clearly than it is by the law as it at present

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present stands." I doubt the possibility of defining the term, "common employment." Great difficulty has been found whenever we have had to discuss that question in court. I was asked by Mr. Justice Brett, in the very last case of Lovell and Howell, to define it, and I professed myself wholly unable to do so. I see that the American courts have professed the same difficulty. They say that it is impossible to hit upon any definition of "common employment," which will apply to all the immense variety of cases which we have to deal with in practice. You cannot foresee them, and in my opinion any attempt to make a definition would only occasion a multitude of judicial decisions as to what the definition meant, and would really embarrass the parties very considerably to know what the law was. I do not think it is possible to do it. It might be possible to make an enactment that a master shall be responsible for the negligence of the manager, overseer, and director. It might be possible to make an enactment of that sort to go that length, although it might occasion some difficulty in construction.

503. But you think that that could be done?—I think that that is within the bounds of possibility, although it would require a trial and a judicial interpretation before it came to be understood; and even that would occasion a great deal of litigation.

504. It has been suggested whether we could not solve the difficulty by making the question of any contract limiting the responsibility of the master, a question for the jury instead of a presumption of law as it is understood to be now; what do you think of that?—I very much doubt whether that would meet with the concurrence of the judges if they were asked about it, for this reason, that really the subject is so surrounded with difficulties, as may be seen by some of the opinions that have been expressed in this room; you might get one jury one day to be of opinion that there was no implied contract, and another jury the next day on a similar state of facts might be of an opposite opinion; I am very much afraid that there would very little certainty as to the liability of the master if it were left to a jury to decide. It strikes my mind that it is only flinching from this difficult question to put it upon the jury; though I have little doubt as to how most juries would solve it. Honourable Members must be well aware that when a case of that sort comes before a jury by a workman, it is usually a compassionate case; perhaps the man may have been killed outright and it may be his widow suing for the benefit of herself and her children. Under those circumstances the jury, like the rest of us, are placed in the very pleasant position of having the power of being compassionate and benevolent out of other people's pockets; and if there is any doubt in the case, of course the plaintiff gets the benefit of it and not the defendant, as is the ordinary rule of law; I am afraid it would not be satisfactory to the judges.

505. Seeing that we have no immediate chance of realising your own views as to the general law, do you think we can maintain the law, as it stands, that is to say, restrictively; the law as regards master and servant, which you have objected to, for example, in that particular case?—I think the law as it stands has an apparent hardship in a case where a workman has suffered an

*Chairman*—continued.

injury through the orders of a manager or director, or overseer, or foreman, over whom he has no control. I think there is an apparent hardship in that case, and I think it is very desirable that every working man should think that the laws are equal for all. I am not prepared to say that some exception to the general rule might not be made in a case of that sort, without operating any very great hardship upon the master; but at the same time I really do not know how to reconcile such an exception with the principle upon which the present exemption of the master rests; that is to say, it is a matter of contract that a servant undertakes all the risks incident to the employment; and, amongst others, he undertakes the risk of the mistakes made by the foreman, or the manager or overseer.

506. Your principle is so large that it would not admit of it?—I think not. I do not think it is consistent with the principle to make the exceptions, although the case looks a hard one; but hard cases make bad laws, as we are in the habit of saying.

507. And bad laws make hard cases sometimes, do they not?—Yes.

508. Then I judge that, upon the whole, your opinion is that we can do nothing; in fact that we had better leave things alone?—I think so; but I may say this, that I have communicated with more than one learned judge on this subject, and I have had the opinion of one in particular who has tried many hundreds of these cases, and he is of opinion that the proposed alteration in the law would do mischief; and it does occur to me that it would have the effect practically, of shifting the duty or prudence of insuring against accidents from the workman to the master, and it strikes my mind that that is a very important consideration in considering the expediency of the thing. At present, according to my ideas, prudent workmen all over the country who are engaged in hazardous employments are in the habit of belonging to benefit societies which insure them a certain provision in case of their being disabled by accident, and I do not know what mischief might be done, I am sure, by putting the duty of insuring upon the master instead of leaving it to the servant as it is at present; I do think that that consideration is worthy of being weighed in taking an alteration of the law into account. It seems to me to come to the question of who shall insure; shall the servant insure or shall the master insure.

Mr. *Macdonald.*

509. You have said, in answer to the Right honourable Chairman, that you think the law is proper at the present moment, and that you would not disturb it?—I think it is sound in principle, and that it is probably quite as satisfactory in working as any substitute that one could suggest for it. It is attended with difficulties on both sides, whichever way you view it, but that there is something reasonable in the law seems to me clear from the fact that not only the English judges but the American judges and the French judges, reasoning *à priori*, without any bias apparently, have come to the same conclusion upon it.

510. As you have mentioned America, are you aware that in the different States there is an entirely different law upon this subject?—I looked it

Mr. *Macdonald*—continued.

it out in the Second Volume of Chancellor Kent's Commentaries, and the honourable Member will find, if he looks at the last edition, that there is a very voluminous note indeed upon the subject, in which there is a formidable string of American authorities laying down the same rule as prevails in the English courts, and many of them decided by judges elected by workmen, I may say *par excellence*.

511. Will you state whether you are aware that the different States have entirely different laws?—I am not aware of that, but I have not made it my business to examine whether there was a difference between the different States on the subject; there often is a difference between the different States of America in the law on very important points.

512. Was the theory of the principle of risk ever heard of until subsequently to the case of Priestley *v.* Fowler?—I presume you mean the exemption of the master from liability for the act of a fellow-servant. Priestley *v.* Fowler was the first case in which that was distinctly raised; and in that case Lord Abinger said that the facts of the case must have occurred so many thousands of times that the circumstance that no such action had been brought before raised a strong presumption that the master was not liable. That was the observation which Lord Abinger made upon it; and it was the first reported decision about it.

513. You stated, I think, that it would be better for the workmen themselves if the employers were not held responsible, because they might be unskilled employers?—I suggested that in this case, for example, that if I were to drive my own carriage, instead of my coachman, I have no doubt that I should have more accidents than he would, most unquestionably; and if you were a director of a railway, and you were to drive an engine, you would cause more mischief than a regular driver; that is the meaning of my observation.

514. But if you drove your carriage, instead of your coachman, and exhibited great ignorance, would not it be likely that you would be mulcted by the jury in considerably more damages in consequence of your driving the carriage yourself?—The law would hold me responsible, beyond all question.

515. Would not it be likely to hold you responsible to a much greater extent?—No, I do not think so; according to the law of damages, they would be the same in both cases.

516. However, you are satisfied with the law as it stands?—The truth is that the same objections may be suggested to every law which exists. I may, from my long experience, be permitted to say that it is a great mistake to suppose that because there are some objections to a law, therefore it had better be abrogated; I have always found in the case of laws about these disputed matters, that it is a choice of difficulties. If you substitute a different law from the one that prevails you will get into a new series of difficulties, and it seems to me that they would be quite equal to those which exist at present, if not greater.

517. If an employer directs or orders himself, is he not liable for everything if that direction may lead to the injury of the workmen?—Yes, certainly.

518. Can you tell me what reason there is that



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a master when he employs another party, although he derives all the profits and benefits from the employment that he delegates, should cease to be responsible?—The reason is the simplest in the world, that in one case he is to blame, and in the other he is not; he cannot do the work himself, he must employ an agent.

519. Why?—I cannot drive a coach; I cannot drive an engine; I cannot work a colliery; I should not know how to do it, and I must employ men to do it, and, therefore, I am under the practical necessity of employing them. The law itself recognises exemptions in one particular case that occurs to my mind at this moment. In the case of shipowners, they are obliged to employ a pilot in certain parts round the coast, and, being obliged to employ a pilot, the law exempts them from any responsibility for what the pilot does, and yet if through his negligence he runs his ship into another, and sinks her, the owner is not answerable, because he is obliged to employ a pilot. The case is the same with every railway company; it is the same with every coalowner; it is the same with every man who makes gunpowder; it is the same with every builder who employs bricklayers.

520. That is to say, he does not do the work himself?—He cannot do it.

521. But again I ask you, would you, when you delegate it to him, do you delegate to him the taking of the profits?—I do not see that the taking of the profits makes any difference, but he takes the profits of doing the regular work; he does not employ the man to be negligent; he does not employ the man to do mischief to his fellow creatures; he tells him, "Be careful; do what you ought to do; follow my orders;" but by the law, as it stands at the present time, is liable to exception, even though he breaks his orders, and does exactly the contrary. That is the injustice, it seems to me, that exists at present; it was otherwise in the time of Charles II. It appears by that case in Skinner's Reports that we have departed from it. The present law is Lord Holt's making; the Legislature did not make it.

522. Then you would allow an employer to delegate the entire of his works, and leave him without any responsibility?—It is not that we allow him; it is necessity that compels him. The nature of the case makes it as necessary as that a shipowner should employ a pilot, without whom his ship would infallibly go on the sands at the mouth of the Thames if he was coming up from the North Foreland to London. The law insists upon his employing a pilot; he cannot help himself.

523. You think so?—I should have thought it was a very plain case.

524. With regard to delegation, do you draw a distinction in your mind between delegating authority over workmen, controlling them in the exercise of their work, and employing men to do the work; the questions which have been already put seem to refer to the delegation of doing the work, and I want to know whether you draw a distinction between delegation of authority and the employment of men to work?—I do not see any sound distinction. It is easy to put a case of a man who comes into a business by will or otherwise, and who really knows nothing about it. He must employ a competent manager or overseer, or whatever it is; and, of course, in doing the business of a railway company, it is

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absolutely necessary to have a traffic manager, a locomotive superintendent, and all the rest of it, in half-a-dozen different departments, each with a manager of its own.

525. He has authority given to him over the others?—Yes, certainly.

526. Do you look upon this with regard to this question as being in the same position as a workman who is employed simply to do the work?—That is the law at present; if you ask me my own opinion, I think there might be a distinction, if you admit that the fundamental rule is to be maintained, that the master is fairly and justly responsible for the acts of his servant, and he acts according to his orders, I think it might be just to make a distinction in that case, although it would clash with the principle upon which the present law rests.

527. Of course it would clash with the question of common employment?—It would clash with the presumed contract between master and servant about undertaking the risks of employment. But there seems some hardship on a working man who cannot deny or gainsay the orders that are given to him by the manager, to tell him afterwards if he met with an accident through following those orders, this is your own fault; you need not have obeyed them. There is some hardship about that, and I see very good reason for making a distinction in that case.

528. If you make the master responsible for the acts of any agent, I presume you would take the agent out of the category of common employment?—Yes, I think so; I argued one of the first cases when this precise question was raised, and I thought at that time, as one of the counsel for the plaintiff, that a man who was placed in a superior position over another, who clearly was bound to obey him, was not really in common employment, but the court thought differently, and that has been adhered to ever since, both in America and in England.

529. If statutory provision were made, you would not be inclined to continue it, would you?—No, assuming that the law is based on a right principle as to the responsibility of masters in general.

Mr. *Tennant*.

530. I collect that you think there is some hardship under the law as it now stands, that it does absolve the master from liability in the case of accidents arising from the neglect of some one who has the control and superintendence of the work?—Yes.

531. Do you think there would be much difficulty in altering the law in that respect, and so far defining it that it may be clearly understood?—There would be some practical difficulty in defining it, because employments are so very numerous and various that it is totally impossible to see beforehand one-tenth part of the difficulties which would arise. Whatever language you employed would be strained. You would require an interpretation given to it by the courts; certain cases would arise which would present the same difficulty, but perhaps a small number of cases would be enough to decide upon the rule.

532. It would prevent injustice probably arising if careful words were used as possible in defining it, although it would not practically prevent all injustice arising?—No, not on the assumption that the general rule is the right one.

Mr. *Tennant*—continued.

533. I know that you think that the general law is essentially unjust, but assuming that the law was altered in that respect, would you then allow the employers and the employed to make special contracts to exempt themselves from any liability to be imposed upon them?—I think that is a matter for the consideration of Parliament, whether or no workmen are or are not their own masters; for, of course, Parliament is very shy indeed to interfere with the liberty of contract; nevertheless it does so in certain cases, even between landlord and tenant, as we know it will not allow a tenant to contract to pay the landlord's property tax, and in Irish cases more particularly; but I think that the question depends upon this, whether Parliament should be of opinion that workmen really are not their own masters in the matter, and that they would be compelled to come into any terms which the masters thought proper to impose. If Parliament came to that conclusion, I should see no injustice in their enacting that they should not be allowed to contract themselves out of their liability.

534. Would it be necessary at all to attempt to define the term "common employment," under the law as it is now interpreted?—I think not, if the alteration was confined to making the master liable for the defaults of the managers, and overseers, and directors, and persons who stood in that capacity over the workmen.

535. Then it would not be necessary to attempt to define the term "common employment"?—I think not, and I believe it to be an impossible task.

Mr. *Shaw Lefevre*.

536. Has it not been under the doctrine of common employment that masters have been held not liable for negligence of their principal managers or agents?—That has been the ground of the exemption.

537. You would make an exception to the doctrine of common employment in favour of those workmen who had been injured by the negligence of the manager?—Yes; that is to say, I think that is the best way of doing it if anything is to be done.

538. I quite understand that you are opposed to the whole doctrine of liability; but taking the law of liability as it now is, you admit that there is an amount of hardship to the men in case of negligence arising from managers who have control over the workmen?—Yes, so far, I do.

539. Do you think that there is no amount of hardship in the case of injury being caused by a fellow servant whose employment was totally distinct from that of another fellow servant; is there no amount of hardship in such a case as that?—As to totally distinct, there is a great deal involved in those words.

540. I will put the case of accidents happening to a railway train through the negligence of a platelayer, in which not only passengers, but outsiders, and also the engine-drivers and the guard are killed; is there no apparent hardship in the fact that the engine-driver and the guard alone could not hold the company responsible?—I thought there was hardship when I argued the case for the plaintiff's widow, and I persuaded myself

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myself that it was a hardship, but I could not persuade the court so.

541. No doubt in that case you hold the company to be responsible, but do not you think that there is an apparent case of hardship to the men in such a state of the law?—It looks rather hard. I remember telling the court that it was quite impossible that the engine-driver could have any control over the platelayer.

542. Do not you think there was an apparent hardship in that case as well as in other cases which have been mentioned?—Possibly.

543. Therefore may it not be wise to extend the exemption doctrine now a little further?—I am afraid that legislation upon apparent hardships would perhaps be hardly reconcileable with principle.

544. You have admitted that yourself in one case?—Yes.

545. But you admit that there is very great difficulty in drawing a line?—Yes.

546. You are aware that the Scotch Courts until very recently did draw a line and make exceptions from the doctrine of common employment in one or two cases that have been mentioned?—In Wilson and Merry, I think, but that has been overruled.

547. Are you aware that up to that decision by the House of Lords the Scotch Courts did, in fact, make those very exceptions?—Yes, I think they did in the case of overseers and managers.

548. I do not know whether the case of McNaughton and the Caledonian Railway has been mentioned by Mr. Ilbert, but perhaps I might call your attention to the decision of the Scotch judges in that very case; are you acquainted with the case of McNaughton and the Caledonian Railway?—I remember the name, but I have forgotten the point.

549. Do you remember this being laid down by the Scotch Court in that case: After remarking on the general doctrine and observing that "there is no trace of such a rule in Scottish law as exempts the master from responsibility merely because the injured party as well as the doer is in his employment," he proceeds to point out two classes of cases in which this doctrine may be held not to apply; (1) where the workmen differ in rank, and (2) where they are employed in different departments of the work. Then he goes on to say this: "It may be that the persons, though servants of the same master, stand in regard to each other in the relation of superior and subordinate. Both are indeed servants, but they are not on the same level, for superintendence is entrusted to the one, and in superintending he is doing his duty, and acting as the representative of the master. In such a case, the Lord Ordinary is of opinion that, for the fault of the servant having such superintendence, the master is and ought to be responsible." "Then again, it may be that the two persons, viz., the wrongdoer and the injured, though both at the time servants of one master, are engaged in different operations, and in distinct departments of work. A dairymaid is bringing home milk from the farm and is carelessly driven over by the coachman. A painter or slater is engaged at his work on the top of a high ladder, placed against the side of a country house, and is injured by the carelessness of the gardener, who wheels his barrow against the ladder and upsets it."



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Then he goes on to point out many analogous cases where two workmen are employed upon totally distinct work, and where the doctrine of common employment does not apply; do you recollect the case of that decision laying down the doctrine of the Scotch Courts?—I remember it now.

550. It was overruled afterwards by the House of Lords, was it not, in the case of Wilson and Merry?—Yes, I think the House of Lords held that both the English law and the Scotch law were the same on that point.

551. Up to the time of the decision in the House of Lords, the Scotch law and the English law was different, and the Scotch Courts had found it possible to draw a distinction between those two cases?—Yes; it seems to me that the whole law on this subject is very recent.

552. It is wholly judge-made law?—Yes.

553. Up to a recent period, the law of Scotland appears to have been different from that of England?—Yes.

554. Therefore, by the Scotch law it was possible to draw a distinction between those two cases?—Yes.

555. Do you think it would be possible therefore, in the English law, to draw the same distinctions?—It might be done; but it would be a difficult matter to frame the words of an Act in sufficiently definite terms to avoid infinite doubt of its meaning when it came to be applied to the vast variety of cases which will arise.

556. Therefore you think it, perhaps, wiser to leave the law as it is, covering the whole ground, and yet operating unjustly in some cases?—I should do so if it were with me. I should leave the law as it is, and leave men to insure, and above all things, and before all things, to take care of themselves. I am quite satisfied of this, that if Parliament were to do anything that was to relax the vigilance of men, it would produce infinite mischief. I know that that is the reason why many of our learned judges have heard of this Bill with considerable alarm.

557. May it not be that altering the law in this way would make the owners more careful?—I doubt it; for my own opinion is that every owner has a strong interest in avoiding accidents of this kind, not merely on account of the mischief that results to his works from them, but on account of his being called upon as a man of humanity to do, what you and I should do, if one of our servants were disabled in our service, even without any responsibility whatever; and in the case of railway companies, if they were not liable for a shilling to their passengers, if there is a serious accident they might have 3,000 *l.* or 4,000 *l.* worth of plant spoiled immediately, and sometimes more than that.

558. Does not the general law of liability depend upon the expediency of making employers more careful?—I suppose that is the ground on which it is to be defended at all, on the ground of policy.

559. That is, in point of fact, the policy on which the law is framed?—I think so.

560. In your early evidence you stated that you could find no justification on the grounds of principle, but that it was a matter of policy?—Yes, that is my opinion.

561. I presume the policy was to make employers of labour more careful; could not the same policy be extended in the case of making

Mr. *J. Brown*, Q.C.

14 July 1876.

Mr. *Shaw Lefevre*—continued.

the master liable to his servant?—It would make the burthen a little more pressing upon him perhaps than it is now. It might press most hardly, perhaps, in the case of a coalowner, where such frightful accidents happen, where 100 people lose their lives perhaps at a time; in cases of that sort it might press very heavily, but in ordinary cases I do not know that you would aggravate the responsibility which exists at present on the part of a humane master who looks after his own interests, and is desirous that his servants shall be well treated.

562. You are aware that Parliament has recently made a shipowner liable to the seaman for the seaworthiness of the vessel upon that very ground, as an additional inducement to him to keep his vessel in a proper state?—I am not aware. I have read a great many discussions, but I am afraid I have not read the Act itself.

563. You mentioned the case of pilots, and you pointed out that the law did not hold a shipowner responsible for the negligence of a pilot, and you thought that the same principle might be extended to a gunpowder manufacturer and numerous other concerns; is there not this great distinction between the case of a pilot and other agents, that the law compels a shipowner to employ a pilot, and selects the man for him?—Yes, that is so, there is a distinction in terms. In the one case the law obliges a man to employ him, and in the other case necessity compels him.

564. But in the one case the shipowner cannot select his agent, whereas in the other he can; is not that an important element in it?—It appears to me that the distinction vanishes as soon as you have arrived at the fact that the party chosen by the employer is a competent person. If the employer chooses an incompetent person, the law says that he is liable for mischief happening through the employment of an incompetent person; the law only exempts him in case he employs a competent man; and as soon as you have got him so far, there is no distinction between the case of a pilot and other cases. You are correct in saying that he must choose from a limited number of licensed pilots.

565. Is it not on that very ground that the shipowner has not the selection of an agent in the case of compulsory pilotage, that the law courts have held that a shipowner is not responsible for the negligence of the pilot?—I suppose it is on that ground that the law compels him to employ one of a certain body of pilots, and does not leave it to his choice whether he will employ anybody else or not.

566. Has it not been on that very ground that the law has not held the employer responsible?—Yes, certainly; on the ground that the law puts the pilot upon him.

Sir *Daniel Gooch*.

567. You were asked a question as between a railway engineman and a platelayer being in separate employment; is there any real difference between a man in a colliery who cuts coal and the man who drags it away from the coal cut; are they not both acting in one common employment, as the one cannot get on without the other?—Common employment in the sense in which it has been applied by the courts seems to extend to anything almost in business employment; it seems almost to go that length. But I do not know that I can distinguish the case you

Sir *Daniel Gooch*—continued.

put of a man cutting coal and a man dragging it away in a truck, from the case of a platelayer and an engine-driver; I do not see any sound distinction between them myself.

568. Supposing you tried to define it by Act of Parliament you would have to provide for all those trades; for instance, a man in some of the highly-paid departments is a different man from the one who works the points; that is common employment; but they are not the same class of men?—No.

569. And not working together?—No; it would be infinite labour.

570. That would be the case with all trades, would it not?—To attempt to define what common employment is, I am satisfied would be an infinite and impracticable task. I have been asked to define, but I never could give any definition that was satisfactory to myself or to anybody else.

571. I daresay, from being engaged in the courts, you know that a very large proportion of those accidents occur from the misconduct of servants, and in most cases it is from neglect of the strict orders of the master?—A very large proportion of them.

572. In fact, the bulk of accidents in railways and mines arises from the breach of orders that they receive from the masters?—Yes, in the case of mines, it is certainly so, from what I have read in the newspapers, and what I have seen also in courts of justice, which are the means of my knowledge.

573. Therefore, even if you put a penalty upon the masters, they could not do more than they do now; that is to take care to make rules and regulations, and as far as they can by supervision, seeing that they are carried out?—That is my distinct impression.

574. And they are deeply interested from the owners' point of view, in the way in which the thing is carried out?—Yes.

575. It must be granted that a bad accident in a coal pit is a serious loss?—Yes.

576. And a railway accident cannot occur without a serious loss to the railway company, apart from any compensation?—Certainly.

Mr. *Knowles*.

577. You said something about removing the responsibility of insuring from the workman to the employer; if such an Act was passed, do you think that it would tend to make the men more careful, providing we had an Act that rendered the master responsible in case of accident and a man had no inducement to save, do you suppose that he would save his money and become less provident, or more careful in his work?—I am afraid that speaking of the class of men who most frequently meet with these accidents, the tendency would be to make them more reckless than they are now, and that is the opinion of the learned judge whom I talked the matter over with, and who has had vast experience of those cases. The truth is, that the unfortunate men who meet with most of those accidents, I will not say in mines particularly, but as I have had occasion to see in actions at law, are wanting in habits of carefulness, and anything that tended to make them more reckless would be productive of the utmost possible mischief.

578. You told us that the consequences generally accruing from railway accidents, as to the destruction

Mr. *Knowles*—continued.

destruction of plant, you thought were sufficient to induce the railway companies to employ the best men, and to take proper care; what is your opinion with reference to the same matter in mines where those great explosions occur, and destruction of property to a very considerable extent?—The same observation must apply there, and if anything *à fortiori*, because a mine may be destroyed and drowned up, and 50 or 100 people killed, and the masters have always been influenced by the claims of humanity and benevolence, even if there is no claim on them by law in such a case.

579. Cannot you conceive that mineowners, the great employers of labour, and railway companies, have a direct interest in taking care of the men, if it was nothing more than continuing the employment of those men?—I do not see how they could be got to have a stronger interest to take care of the men. I believe that a railway company, or a locomotive superintendent, would be as sorry to lose a good experienced driver or a guard by accident, as any one of us would be to lose one of our old servants who has served us faithfully for a great many years.

580. Do not you think the same argument would apply to colliery owners and to all employers in any capacity?—I think so, certainly.

Mr. *Macdonald*.

581. You were asked by an honourable Member if a great many, indeed the majority of the mine accidents were not caused by the recklessness of the men; have you studied this question at all, or are you going by report?—I have no further acquaintance with it than what I have derived from newspaper reports, and I think I have read one or two reports of Commissions upon the subject.

Mr. *Macdonald*—continued.

582. Have you read the Reports of the Inspectors of Mines which have been issued since 1850 until now?—No; I am sorry to say I have pretty nearly worn out my eyesight by reading law books.

583. Are you aware that fully 80 per cent. of all the accidents have been attributed by coroner's juries to the misconduct of the managers of mines?—I am not at all aware of that.

584. Therefore you speak without knowledge of the subject?—I do not think I have ventured to say that the majority of accidents in collieries were due to the carelessness of the men.

585. You have, in the Mines Inspectors' Report, a detailed account of every accident that has occurred, and yet you come to the Committee and tell them on general statements that a large number are caused by the workmen; I ask you again if you have any knowledge at all of the subject when you state this?—You may put me down as ignorant as you please. I may be said to have a little more than a newspaper acquaintance with the subject, beyond one or two Reports of Commissions which I think I read years ago.

*Tuesday*, 18*th July* 1876.

MEMBERS PRESENT:

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|---|---|
| Mr. Cawley. | Mr. Macdonald. |
| Sir Daniel Gooch. | Mr. Eustace Smith. |
| Mr. Knowles. | Mr. N. Stanhope. |
| Mr. Shaw Lefevre. | Mr. Tennant. |
| Mr. Lowe. | Mr. Wyndham. |

THE RIGHT HONOURABLE ROBERT LOWE, IN THE CHAIR.

Mr. ROBERT SAMUEL WRIGHT, called in; and Examined.

Mr. *Wright.*

18 July 1876.

*Chairman.*

586. YOU are a Barrister, are you not?—Yes.

587. You have given a good deal of attention to the subject which is referred to this Committee?—Yes, for some years past.

588. You have been employed professionally with regard to it, have you not?—I have been consulted on several Bills that have been introduced for some years past before the one of the present year. I cannot recollect all the cases, but there is one which was brought in by Mr. Morrison, Mr. Hind-Palmer, and Mr. Andrew Johnson in 1872, of which I have a copy here.

589. Did you prepare that Bill?—I either prepared or settled it; I cannot recollect which.

590. What was the nature of that Bill?—It went further into the detail of the kind of remedy proposed on behalf of the workmen than the present Bill. It proposed to state cases in which the master should be liable, whereas the present Bill, which occasioned the appointment of this Committee, deals much more generally with the subject.

591. Did you settle that Bill?—I settled it two or three Sessions ago for another Member, and it was re-introduced on consultation as about the best form in which a Bill should be submitted to Parliament in the present Session.

592. Is there anything special which you would wish to say with regard to those previous Bills?—The plan of attempting to define at all closely what should be the rules of law on the subject of employers' liability appeared not to find any favour in any quarter. People discussed the details which were proposed instead of discussing, on the second reading, the principle that was involved in the question. The difficulty appeared to be quite insuperable from the point of view of the workmen; the difficulty I mean of attempting to lay down on their behalf what should be the exceptional cases in which the employer should be recognised as properly exempted from liability for injury to the workmen themselves. They quite admit that there may be such cases, but they say it is not for them to define them, and they do not know enough of the particular necessities of each branch of trade or manufacture to do so. Therefore in the Bill which has given occasion for the appointment of this Committee, they have attempted to deal with it in the most general possible way without defining even what "common employment" as used with reference to this subject means; not that I think there is any difficulty in defining what it means, but it would lead to many questions.

*Chairman*—continued.

593. As we are upon that point, perhaps you will tell us how you would define "common employment"?—When I say there is no difficulty in doing it, there is no difficulty in doing it indirectly. I should do it in this way. The best definition of an employer's liability generally for the acts of his servant, as distinguished from his liability to one servant for the acts of another servant, is given by the late Mr. Justice Willes in a case which was decided in 1870, who says, "I apprehend it to be a clear rule in ascertaining who is liable for the act of a wrongdoer that you must look to the wrongdoer himself, or to the first person in the ascending line, who is the employer, and has control over the work. You cannot go further back and make the employer of that person liable." Then I say that "common employment" may be defined as the employment of all the persons employed for the same purpose under the highest person liable according to that definition.

594. Then the effect of that would be that there would be some persons in a higher position than others who would still be held to be in common employment?—That is one of the recent developments of the doctrine; and since the case of Feltham against England, that has never been denied.

595. And that would be included in your definition?—Yes. The example which I have read is from the late Mr. Justice Willes' judgment in the case of Murray *versus* Currie, in the Law Reports, 6th Common Pleas, page 24.

596. What is your opinion generally of the state of the law of negligence as it stands at present, with regard to the liability of a master for the act of his servant to a stranger or to a fellow servant?—There is the greatest possible difficulty in answering that question precisely, because I should think there are no two words more ambiguous in the English law than the two words "negligence" and "servant." But without going into all the possible meanings of those words, I think the law is tolerably settled now, although not

*Chairman*—continued.

not always very clear. At the margins, where each principle is applied to extreme cases, it is of course very obscure. But generally the rule is, that a master is liable for all the torts of his servant in the course of his employment, and liable for all the contracts of his agent in the course of his employment; he is hardly ever liable for the contracts of the servant or for the torts of the agent; that is the broad distinction between the two, except in election law, which is different.

597. Does that appear to you to be a satisfactory state of the law?—Yes, I think so, apart from the question which is now before the Committee.

598. You think it is satisfactory that the master should be liable for all the torts of his servant if they were done in the course of his employment as servant?—Yes, I think so with this qualification; that the courts are rather too unwilling at present to correct the verdicts of juries on the question of what is a reasonable deduction from what has been given in evidence, and sometimes the employers are held unduly and unnecessarily, and in my judgment improperly liable to strangers for the torts of their servants. The courts are rather too unwilling perhaps to set aside verdicts in that sense; sometimes it may be the other way.

599. You think it a just law that a man should be liable, for instance, for the act of a servant which he has expressly forbidden, if that act was done under the general authority which he gave him?—Yes, on the ground, firstly, that I think all countries have found it necessary to introduce some such rule, which in itself is a strong argument, and that even if it had to be established now for the first time it seems to me that the employer who for his own purposes, which must be assumed, employs a servant, the servant being a person, generally speaking, who is unable to pay damages for the injuries that he commits in the course of that employment, should be to some extent at any rate responsible for the servants' acts.

600. Is not the reason of the rule placed by Blackstone upon the ground of *qui facit per alium facit per se*?—Yes.

601. Is that a satisfactory ground?—No, it certainly is not to my mind quite satisfactory; it is a ground which requires so very many exceptions that it does not seem to convey any precise instruction.

602. If my coachman gets drunk I do not get drunk; I suppose it seems almost to imply that?—I think there is a great deal, if I may say so, of confusion imported into the whole of this question by not clearly knowing what it is for, and why the law does hold the master liable in the case of a servant. There are several things which seem to me to be sometimes forgotten in the discussion. In the first place the person whose negligence or wrongful act causes harm to a person or property, is himself liable to start with. That is sometimes forgotten; the servant is always liable. The second thing is that the employer is not liable for the act of the so-called servant if it was what I may call a wilful original act or default on the part of the servant. It is very difficult to guard that sufficiently, but the general rule is, subject to something like this, that if a servant for his own purposes does an act, even though it be in the course of the employment, it does not at all follow that the master is liable.



*Chairman*—continued.

Mr. *Wright.*

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603. Can you give us an instance of that?—I know there is a case which I am afraid I have not got a note of, where a servant driving his master's horse wantonly struck the horse, and thereby caused him to injure somebody, and there the employer was held not liable.

604. I thought the case had been the other way?—My recollection of it is, that the servant who wantonly, from his own improper feeling, struck his horse without any necessity for the purposes of his business, and thereby caused the horse to injure somebody else, the master was held not liable.

605. May I suggest whether the case was not this way, that where a servant struck his master's horse, wantonly as you say, and thereby occasioned the accident, the master was held liable, but where he struck another person's horse, he was not held liable?—That may be so; I will find the cases for the Committee.

(*The Witness subsequently furnished to the Committee the following authorities:*—)

1821. *Croft* v. *Alison*, 4 B. & Ald. 590. *Per Curiam.* (Abbott, C. J., Bayley and Holroyd, J.J.).

"If a servant driving a carriage, in order to effect some purpose of his own, wantonly strike the horses of another person, and produce the accident, the master will not be liable. But if, in order to perform his master's orders, he strikes, but injudiciously, and in order to extricate himself from a difficulty, that will be negligent and careless conduct for which the master will be liable, being an act done in pursuance of the servant's employment."

(The same reasoning and distinction would seem to apply where the servant strikes his own horses.)

1838. *Lyons* v. *Martin*, 8 A. & E. 512.

Patteson, J. "A master is liable where his servant causes injury by doing a lawful act negligently, but not where he wilfully does an illegal one."

1849. *Gordon* v. *Rolt*, 4 Exch. 365.

Parke, B. "The result of the authorities is, that if a servant in the course of his master's employ drives over any person and does a wilful injury, the servant, and not the master, is liable in trespass; if the servant by his negligent driving causes an injury, the master is liable in case; if the master himself is driving, he is either liable in case for his negligence, or in trespass, because the act was wilful."

I will take another instance; supposing a miner employed in a coal mine (assuming him to be a servant), improperly, and contrary to orders, for the purpose of lighting his pipe or anything of that sort, opens his safety lamp, and there is an explosion which kills a passer by, as I understand the law, it seems clear that the employer would not be held liable.

606. Has that been decided?—No, I am not aware of any case that has yet been decided.

607. Can you tell us why you think so, or what authority you have for it; I think there is an impression the other way; I do not know whether it is founded on fact, or not?—It seems to me that in a case in which a servant in the act which he has done has acted not at all in carry-

Mr. *Wright*.

18 July 1876.

*Chairman*—continued.

ing out the purposes of his employment, but entirely, so to speak, out of his own head, he is the only real principal in the matter, and he is not in any sense an agent.

608. He is entrusted by the master with this dangerous machine, a lighted lamp, is he not?—Yes.

609. Does not that make it part of his employment in the sense in which it is used, which would make the man liable according to the ordinary analogy of the cases?—According to the best judgment that I can form, I should say not, but I am unable to give the Committee a distinct decision upon that case.

610. Is there anything else which you would like to say with regard to the general law on the subject before we go to the particular question which is before this Committee?—I think it is worth noticing that the whole of the law of negligence is exceedingly modern. It is very curious what slight traces there are in the ancient books of anything about the law of negligence either criminal or civil, except in the sense of the word "negligence" in which it is used to mean breach of a contract to take care, which is quite a different matter. If you look for instance in such a book as Chief Baron Comyns' Digest under the head of "Action" on the case for negligence, you will only find one single instance there of anything like an action for negligence in the modern sense as apart from contract, and that is the old case of a servant when exercising horses in Lincoln's Inn Fields, in the reign of Charles the Second. The case there was that the master was held liable to a stranger for the act of his servant in exercising his horse. No authorities were referred to, and it seemed to be treated as a case of first impression. In the criminal law the subject does not come up for discussion until the end of the last century. As regards the liability of a master to a servant for accidents, as the Committee no doubt have been informed, Priestly and Fowler is the earliest case. Then the law itself on this very point has been constantly changing and progressing, and it is not until a very few years ago that a person in the position of a foreman was decided to be within the rule as to common employment. Now it has got so completely established that it can no longer be argued in a court of law.

611. We have now arrived, I think, at the particular question which is before this Committee; what have you to say as to the existing law with regard to the liability of the master for injuries to his servants or those who are employed by him, as distinguished from strangers?—I have already stated what I take the meaning of "common employment" to be, but I find very great difficulty in stating what the real principle on which the law now proceeds is, and I find a difficulty in saying exactly how far it ought to be approved or not.

612. What has common employment to do with the matter?—I do not see what common employment has to do with the matter; it appears to be a short name for something else. In the most recent cases it is distinctly put on the ground that the master ought not to be held liable because the servant has undertaken the risk knowingly, and therefore the risk must be taken to have been considered in his wages.

613. Do you consider that really supplanted the doctrine of common employment?—So far as

*Chairman*—continued.

I understand it, the phrase "common employment" only denotes the same circumstances.

614. Is this a modern doctrine about its being considered in the wages?—So far as I know, it was first started in that case in 1842 of Priestly against Fowler, and I am not aware that it has ever been applied in any other branch of the law. Certainly it has never been applied in the case of railway companies and their passengers; it has never been supposed that because a passenger knows that he undergoes a risk in travelling by railway that therefore he is not to recover from the company.

615. What is your opinion of this doctrine, and how did it arise?—I think it is pretty clear that in the case of Priestly and Fowler, which established it, the Court were frightened by the possible consequences of holding a master liable to one servant for the negligence of another. But if the Committee look at the judgment in that case, it is very singular that all the instances, the possibly objectionable consequences which the Court put, and on which they rely solely for the judgment (they say, it being a question of first impression, it must be decided with a view to consequences) are of two kinds; one kind, cases of a menial servant, and the other the cases of not a servant at all, but an ordinary contractor, such as a coachbuilder, and so forth, for whose negligence the law never pretended, and was never supposed to pretend, to hold the vendee of the coach liable. A menial servant I should put on quite a distinct basis from an ordinary workman. I think it may be right that the master should not be liable to one menial servant for the negligence of another.

616. On what ground would you put it?—On the ground that it seems to me that such a servant really does judge for himself. First of all, "servant" is in his case used in a totally different sense. Secondly, in domestic service, each servant has the best possible means of knowing the character and habits of every other servant, at any rate after a short time of service, and no doubt if a servant thinks that those are not safe people to live with and work with, then I think it is very easy for him to leave his employment. He has information and means which his master cannot have of knowing what risk he runs, but it seems to me to be different in the case of an ordinary workman according to modern practice, where the men do not necessarily have any real personal acquaintance with each other's habits of mind or of working.

617. Is it so, that hose men from working together obtain a knowledge of each other?—They may, but not so necessarily; not so entirely. That is the main ground upon which I put it.

618. What is your view with regard to the existing law?—It seems to me that it is a peculiar exception, without any co-extensive peculiar grounds to support it.

619. The ground that is put forward is that of course the risk is considered in the wages, and that there is an implied contract to bear the risks in consideration of a larger amount of wages; is that the way in which the judges put it?—That is the way it appears to be put, but it appears to me to be a fiction. I do not suppose anybody really imagines, with the exception of a few peculiar trades, that the risk is really considered, to use the common phrase, in the wages at all. I am unable to speak about that from personal experience,

*Chairman*—continued.

perience, but every one that I have spoken to says that they are unaware of any case except the case of some very peculiarly dangerous trades, and I am told that it is the inconvenience and discomfort that causes the difference in the wages. Certainly the evidence taken upon the factory inquiries, reports of which I have seen from time to time is, that the prospect of death at an early age from the dangerousness of a trade hardly affects the wages at all.

620. In fact you think, for instance, in an ordinary occupation such as a colliery, the risk of it does not tend much to raise the wages?—I believe not. I believe that the rate of wages is governed mainly by much more general circumstances, and even if there may be peculiar mines so dangerous, that persons going to work in them might be imagined as likely to consider that risk, still the rate of wages is a much wider thing, and is not determined really by considerations of that kind at all.

621. Do you consider this assumption which the judges have made to be a matter of law or of fact?—It is an assumption of fact.

622. How could the judges come to have power to raise presumptions of fact; what is the process by which such a thing becomes part of the law?—It generally happens that it is done by some strong judge who has a strong view on some particular domestic or social question; he states it with great vigour, and perhaps great imagination, in his judgment; that judgment is cited afterwards whenever anything at all similar occurs; the courts are disinclined to depart from it, and if they do not depart from it, the principle naturally goes on extending itself to other cases, and becomes a strong consolidated doctrine.

623. And becomes, in fact, law rather than fact?—It becomes really law.

624. Do you consider that a desirable process of making law?—No; I certainly think that a great deal of good would be gained by having all those questions re-opened, as, in fact, they are being done now in a most extraordinary degree under the Judicature Act. A great many of the old idols to which lawyers have clung for years have been disposed of very rapidly.

625. How does the Judicature Act affect it?—Because it has brought in strong equity judges sometimes without any great previous knowledge of common law, to look upon common law questions by the light of common sense in a way which has never before happened.

626. Have you any other objection to state to this view?—I think there is another very strong objection. It seems to me to tend directly to the discouragement of an employer from personally interfering with or superintending his own works in this way: under the existing law the master is liable to his servant only where he, the master, himself has in some manner been guilty of personal misconduct or negligence, or has personally interfered in the matter which caused the accident; and it seems almost necessary that where a master can obtain immunity, so far as he is concerned, by not knowing anything about it, he will take care not to know too much about it.

627. It is a premium upon a master withdrawing himself from the actual management of his affairs?—So it strikes me.

628. The doctrine in which a master is held liable to a stranger, is that of *qui facit per alium facit per se*, is it not?—I have no doubt that that is one of the applications of the ancient maxim of *qui facit per alium facit per se.*

629. Is that applied in this case?—It is not applied.

630. Can you give any reason why it should be applied in the one case, and not in the other?—I would rather put it in this way; I am unable to see any reason why the liability of an employer should be different in the case of a servant, and in the case of a stranger, For instance, supposing a bricklayer or a plasterer negligently lets drop a pail full of stuff from a scaffold, and hurts a stranger and a fellow workman who are sitting at dinner together underneath, I cannot find any reason why the employer should be liable for the injury to the one, and not for the injury to the other, whereas as the law stands he is liable to the stranger, and he is not liable to the workman, even though the workman who is injured is really engaged in a totally different and quite independent part of the work from the work upon which the negligent workman was employed, and could not by any possibility know anything about the likelihood of his being injured through that man.

631. What would you really think to be the proper way of dealing with this question; how would you amend the law if you had your own way?—I have the greatest possible difficulty in presuming to suggest anything at all upon the subject. It seems to me that almost every dangerous trade would have to be considered on its merits, with reference to this question.

632. You do not think that a general law could be made that would be suitable to all trades?—I think that if opportunity was given, there would be some trades that would be able to establish a claim to the total or partial continuance of the existing exemption.

633. When you speak of trades, you mean that the masters could make out a case for not being liable to their servants?—I have no doubt that in some trades they could make out a total or partial case.

634. What sort of trades do you point to in that?—I think I could not give any useful suggestion in that direction, beyond saying that it seems to me probable that it would prove to be so.

635. Would it be on account of their greater risk, or what?—Partly on account of the natural and necessarily more obvious nature of the risk, that I think would be a consideration; and partly, also, it may be, that there are some trades which it is necessary for the country should be carried on, and which could not be carried on if the absolute liability of a master for the act of his servant for injury to another was established; I can conceive that there may be trades in which this would apply. But apart from such peculiar trades, if you take, so to speak, the chain of liability downwards from the master, the strongest point to my mind is, that the master ought to be held liable to a servant for injuries caused to his servant by the negligence of a foreman or other person in a position of superintendence, especially where the superintendence is directed to the proper safeguards for personal security, I mean superintendence or control of appliances for personal safety.

636. How far would you carry that; would you say to any number of persons, each deriving immediate

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immediate authority from the other, down from the master; supposing there were 10 people, and a sort of hierarchy of authority, would you extend it through that number of stages till you could trace it down to the master?—Yes, certainly, any number. I think the master ought to be responsible for, and he ought to warrant the care and skill of his foremen, at any rate (I wish to make that distinction clear), as to matters in which they have a direct relation with the employer, or in that part of the work which has a direct relation to the preservation of life and the safety of the work.

637. Would you limit it to that?—I would extend it to all foremen, who come to some extent within the same considerations. Where the business of the foreman is, for instance, to see that a scaffolding is properly put up, or anything of that sort, I would hold the master responsible in all events for his negligence.

638. What sort of cases would you not extend it to; where a foreman should not have the power of making himself liable?—I am not prepared to say that there is any case in which a foreman should not have the power of incurring liability, so to speak, on behalf of a master. The point which I rather wished to submit to the Committee was that the reasons may be much stronger for holding the master liable, in all events, for the superintendence of certain parts of the appliances, than for holding him liable in all events for the conduct of certain persons.

639. Would you, or would you not, make him liable for the conduct of a man who took the gauze off the safety lamp?—I do not think he is liable now in that case.

640. And you would not make him liable?—No; anything in the nature of a wilful action I would not. I do not see any principle of justice on which an employer could be held liable for, if I may so call it, such a distinctly original wilful act as that of the miner who knocks off the top of his safety-lamp to light his pipe.

641. You contemplate that if you could carry out your views there should be an opportunity given of considering the distinction between the ordinary case of liability of a master to a stranger, and the case of the liability of a master to a servant?—If I may be allowed to postpone the answer to that until I have gone through another step with regard to the safety of a miner, I may say again that I do not think that the master ought to be exempted from liability even in that case if he is under an obligation to ventilate the mine, and by reason of his default to ventilate it an explosion happens, which otherwise could not have happened; that is on the principle that several wrongdoers shall not apportion the wrong between them, which runs through a great deal of our law. Secondly, I would extend it in a measure, so to speak, laterally; at any rate that the exemption of the employer should not apply where the negligence of the workman was not, so to speak, of one co-operating with the injured workman on the same work.

642. Would you not have great difficulty in defining what you mean by "the same work"?—There would be some difficulty in doing that, but those things can be defined nearly enough to accuracy to work. If the Committee adopt the view that some distinction of that sort might justly be made, I think there would be no insuperable difficulty in approximating, more or less, to a clear expression of it.

*Chairman*—continued.

643. I presume that it would be a question for the jury as to what would be "the same work"?—Yes; it would come to this; that subject to certain exceptions, which might be laid down in the Bill, it would very soon get established by the judges, and if the judges failed to establish it, then Parliament might interfere again. There are many strong instances, and in order to make quite clear what I mean, I should like to mention some; for instance, the case where a ganger of platelayers and the guard of a train were held to be in "common employment," and where a painter and a railway porter who was turning carriages on a turn-table were held to be in common employment for the purposes of this rule; that seems to me to be a great hardship.

644. Is not the distinction really whether the men are employed in common employment about some particular object at the same time?—I have no doubt that that is what has been in the minds of the judges, but it does not seem to work out very justly.

645. If you and I were carrying a weight, and I let it drop on your toe, that would be a common employment, would it not?—That is a case in which I should be disposed to admit the existing state of the law.

646. You would say that there was such a propinquity that really it ought to exempt the man?—At any rate I say it is a very different case from the case of the ganger and the guard of the train.

647. The guard of the train was upset by the platelayer's negligence?—I am unable to see there that the guard of the train ought in any way to be held to have sacrificed his right to damages against the master.

648. You think that a Bill could be drawn making that distinction so clear as to be workable?—I think so. It is only a question of trouble; almost everything in drafting is only a question of trouble. I would, thirdly, increase the master's liability by making him responsible in all cases where the injury is caused by any omission to observe the statutory regulations expressly imposed for the purpose of preserving life and safety.

Mr. *Shaw Lefevre.*

649. Is not that so now?—Not quite. You will find a very recent case, last February, of Howell *v.* the Landore Steel Company, where they held that this doctrine of non-liability for the act of one of the servants exists. Notwithstanding that the general principle is not free from doubt. All the judges in Wilson *v.* Merry, except, I think, Lord Colonsay, refused to express any opinion upon that subject.

650. I thought there was a case of Couch *v.* Steele, where the contrary doctrine had been held, arising out of the liability of a shipowner to his seamen?—The ruling in Couch *v.* Steele has been very much frittered away of late years by two things. First, it is said that where a servant broke a statutory regulation designed for the prevention of a different event from the particular event which had happened, the breach of the statutory regulation will not, of itself, give a right of action; and, secondly, it has been held, according to the principle which the honourable Member well knows, that if the statute which creates

Mr. *Shaw Lefevre*—continued.

creates and imposes the duty, in the same breath provides a penalty for the breach of it; generally speaking, no common law remedy is thereby attracted.

*Chairman.*

651. You would clear that point up altogether?—Yes.

652. What other suggestions would you make?—The other suggestions which I would make would be rather in favour of the employer, that is, as contrasted with the previous suggestions which I have made. I would retain the exemptions on the grounds which I have stated, in the case of menial servants, so called, or in any other peculiar case in which the employer can show sufficiently exceptional grounds.

653. Do you mean that you would allow him to do this on the trial, or that you would place this in the Act?—In the Act itself before Parliament.

654. What particular grounds do you contemplate?—It may be that there are no such cases, but it seems to me to be rash to assume that there are none. I think there may be trades in which the continuance of the trade may be a matter of national importance, and yet the entire abolition of these exemptions or their abolition to any extent might amount to a ruin of the trade, and then some other remedy might have to be applied. Also there may be cases in which it can be shown that the workman in a trade does really undertake the risk with his eyes open, and voluntarily accepts an adequate consideration for this in wages or in something else.

655. Would you limit the employer's liability in any way?—It seems to me worth consideration whether, in something like an analogy to the Merchant Shipping Acts, you should not lay down some rule. I am not prepared to suggest the details, but whether something of the kind should not be done. Under the Merchant Shipping Acts there are certain limitations as to so many pounds per ton where an employer has been personally in default, and it seems to me that something analogous to that might be established in the case of trades, as has often been proposed in the case of railway accidents. And there is another analogy which might be useful in the case of large works where great accidents occur, in analogy to the provision in the Merchant Shipping Act, which provides that in case a number of persons are injured, the proceedings shall be consolidated, and that the total sum for which the employers are liable should be distributed by some official body, such as the Board of Trade, amongst the sufferers.

656. Would you have the kindness in a very few words to state these recommendations of yours?—Firstly, I would make the employer generally responsible for the acts of all persons employed by him in a position of superintendence, especially in cases where the duty of those persons has a direct relation to the safety of the workmen. Secondly, I would make him generally responsible for the acts of all inferior workmen not co-operating on the same work; that is more difficult to work out, and would require great consideration. Thirdly, I would make him responsible in all cases where injury is caused by an omission to observe the statutory regulations expressly imposed for the purposes of personal safety. Fourthly, I would retain the employer's exemption, firstly, in the case of a menial servant;



*Chairman*—continued.



and secondly, in any peculiar case in which the employer can show a sufficiently exceptional ground. Fifthly, I would possibly limit the employer's liability, on the analogy of the Merchant Shipping Acts; and I would like to add that if there was any doubt about such a case as that of the man wilfully unlocking or breaking the safety lamp, I think that ought to be removed in favour of the master.

657. You think the master ought not to be liable for wilful negligence if the man takes the gauze off his safety lamp to light his pipe?—If that has been the sole cause, and if the master is not in default in respect of ventilation.

658. I understand you to consider this to be a brief way of dealing with the subject, that you would prefer in some degree to modify the present law of the liability of a master for the acts of his servant towards a stranger, and make the law as regards servant and stranger identical; and you think that no other course is preferable to such a course as that?—I very much doubt whether, to use a common phrase, society could go on if the master was not liable as much as he is now to a stranger for the acts of his servant. It is by no means an exaggerated liability.

659. Is not the difference after all very much a thing that touches the upper classes where it is a question of strangers, and only touches the workmen where it is not?—No, I think the most numerous cases which I have seen in practice are cases where the employer, even when sued by a stranger, has been in the position of a contractor or quite in the middle classes.

660. Do you see any hardship in the treatment that railway companies have now, in the fact that a single pointsman, a skilful and experienced man, may cost the railway company 100,000 *l.*?—I see some hardship in that, but I think the hardship is exaggerated, because the juries take the cure of the imperfect law into their own hands to a very great extent. Nobody ever recovers anything like the damage that he suffers. It is a recognised thing, that amongst the ordinary accidents of life men must suffer something, and they never recover anything approaching to the amount of suffering or the loss; and I am informed the compensation is not so high in this country as in France.

Mr. *Knowles.*

661. The Right honourable Chairman put a question to you in which he called a safety lamp a dangerous machine; do you consider them as dangerous machines?—I apprehend that some of them must be considered dangerous machines in a certain sense.

662. Have you ever seen a safety lamp?—Yes, I have two or three in my chambers.

663. Do you know what they are used for?—I am not quite clear that I apprehend the question; I suppose they are used in going into workings where there is supposed to be inflammable gas.

664. Do you suppose that they are not used generally as an extra precaution against accident?—No; I take it that there are a very great many cases in which mines could not be worked at all without safety lamps in the absence of very much more expensive ventilation than is now used; but I do not really know anything about the coal trade.

665. Would you be astonished to hear that

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safety lamps, instead of being considered dangerous machines, as the Right honourable Chairman put it, are used in well-ventilated mines as an extra precaution?—I take it that the danger is not in the safety-lamp, but in the gas outside of it.

666. Are you aware that in many mines or seams they are liable to a sudden outburst of gas, which changes their condition continually?—Yes.

667. And from many unforeseen causes a mine which is perfectly safe at one time, may in a very short time be unsafe?—I have no doubt that that must be the case.

668. That being the case, are you aware that those safety lamps are used as an extra precaution where a mine is considered safe, in the event of such causes of danger from a fall of the roof or from any unforeseen cause?—It seems to me that that is saying that they are used as an ordinary precaution, and not as an extraordinary one, if they are used in all mines.

669. For instance, take a man working in a mine; if he causes an accident to a lot of others by taking off the top of his lamp, the master has done everything he could to render the thing safe, and has complied with the Mines Regulation Act with special rules; but the man, through some negligence of his own, injures a number of other men; would you there hold the master responsible?—It depends very much upon the nature of the management. In that case, if the workman wilfully took off the top of his safety lamp for purposes of his own, I think it would be very unjust to hold the master responsible in that case.

670. Did I rightly understand you to answer the Right honourable Chairman, that a number of workmen working together could not obtain the same knowledge of each other as the master could?—I think I rather said that they could not in the same degree as domestic servants.

671. Is not their knowledge of each other greater, do you think, than it is possible that a master could have who employs two or three thousand workmen; could he have any more knowledge of each workman than the workmen themselves could have of each other?—No, certainly not; but I mean workmen in the same parts of the work.

672. Then you do not mean to say that the men could not obtain that knowledge of each other's ability, and as to whether they were careful men or not?—I should say that it is in their power sometimes, but not always. For instance, in those cases like the guard of a train or the ganger of platelayers, I do not see how it is possible.

673. Do you suppose that a guard of a train does not know that he is subject to the platelayer, and that he is subject to the pointsman, and that he is subject to all the men employed along the line for the safety of the line?—So does every passenger by railway.

674. But can you draw no distinction between a man that is paid to do a duty, and is supposed to know every man connected with that duty, such as I have described, and a stranger and a passenger?—I see none on this part of the question.

675. But a stranger might know that he is paying his fare to go by railway to be delivered at a certain place and expects to be delivered so, free from accident; but in the case of a guard, we may assume, may we not, that he knows that he is subject to accidents, because he knows that he is subject to the pointsman, and to the platelayer, and to all the other men along the line, and hence he knows what may occur, and he is supposed to be more correctly acquainted with the railway system altogether?—No doubt the guard has greater means of knowledge of the danger of railway travelling than an ordinary passenger has; I freely admit that.

Mr. *Knowles*—continued.

676. Do you see no distinction between the knowledge that a guard must have of the line that he is running on, and the knowledge which a passenger or a stranger would have?—The point on which I go depends entirely upon this: that no guard could have any more knowledge of the probable negligence of those platelayers than a stranger.

677. Do you suppose that a guard has no more knowledge of the danger to which he is exposed on the railway than a stranger has?—Yes, I think he has probably a greater knowledge.

678. And does not the guard undertake to do a certain duty, for which he is paid more, with a knowledge of the danger that he is subject to by running over the line?—My impression is that the contract of a guard, so far as there ever is a contract, in his own mind, is, that he is employed to run the train on a sound line, and if a platelayer leaves a piece of the line open, that is not within the guard's notion of his contract.

679. Supposing that in consequence of the very hot weather which we are now having, a rail expands and lifts it out of its place and the train runs off the line, would you blame the company in a case of that sort?—I think the case which you put is one of extraordinary accident which could hardly be foreseen, and in that case I would not hold anybody liable, nor would a court of law, I think, in that case.

680. As the Bill introduced by the honourable Member stood in the House of Commons, I think it would have rendered the company liable under any circumstances?—I think not; only in the case of negligence, and I think there would be no negligence in that case which the honourable Member puts.

681. Then you can draw no distinction between a workman working for wages and a stranger passing by?—I did not put it so high as that; I think the distinction as it is now drawn is very much too wide and quite indefensible; but I think that the workmen would be well advised to agree, and they would agree to something which would be very far short of the abolition of the distinction. The suggestions which I have ventured to submit just now, do not at all go to the abolition of the exemption; they only very much narrow it.

682. You stated that you would treat a workman just as you would a stranger passing by, and you illustrated that by something with reference to a bricklayer and a man who might be eating their dinner under a scaffold; and I ask you has a workman no more knowledge of the danger that he is incurring by walking underneath that scaffold, where he is working continually, than an ordinary passer-by who has no interest whatever in what is going on?—In many cases no more opportunity of knowledge, especially in the case of new men.

683. Do you say that a man who is working at a job

Mr. *Knowles*—continued.

a job continually, and for which he is paid, has no more interest than an ordinary passer-by who has nothing to do with it?—No, I do not say "no more interest;" but I meant no more opportunity of knowledge.

684. You suppose that a man who was working at a job continually has no more knowledge of his danger, or anything connected with it, than a man who is merely a passer-by and has no interest in it?—In many cases, indeed in the ordinary case, probably he has nothing to do with putting up the scaffolding, and even if he examined it he would not know whether it was good or bad; but if he is injured by the default of that scaffolding he cannot recover, whereas a stranger can, and I confess it seems to me that there is an unfairness in that.

685. Have you ever considered by what means you would assess the amount of damages for which the master would be responsible, particularly in the very numerous small accidents that occur all over the country, without keeping the parties in a perpetual state of litigation?—I think, practically, it can be done by the distinction which is drawn between the county courts and the superior courts. If you retain the 50 *l.* limit of liability in the county court, people will often think very seriously before they go into the superior courts for higher damages.

686. For instance, in colliery operations, in iron-works, and many large occupations in the country, where they just get a finger damaged, and are, probably, off work for a day or two, would you subject them to the same process of litigation for damages in those cases?—I would certainly make whoever ought to pay, pay; whether it is a finger or a hand is quite immaterial.

687. Would you limit or restrict the amount, or subject the parties to a course of litigation in every case?—I think the ordinary modes of obtaining redress throughout the whole of the concerns of life must apply in that case, as in others. The question really is, is it just that either should pay, and if so, you cannot set up a special objection in this case, that it is expensive to resist proceedings to recover from you what you ought to pay.

688. Did you ever see a large colliery or a large iron-works?—A great many.

689. Then you have seen something about the dangers to which those people are subject continually?—I know something about them; I have never been underground.

690. The Right honourable Chairman asked you if those damages obtained generally by passers-by were not generally obtained by those in the upper classes of society; are not the poorer classes of society much more liable to that than the upper classes of society?—They are much more subject to injury; first, because they are much more numerous, and, secondly, because they go on foot.

691. I understood you to say, in answer to the Chairman, that it was only the higher classes of society that were subject to it?—That was not what I meant to convey to the Committee, although I do not exactly recollect what the question was at the present moment.

Mr. *Percy Wyndham.*

692. Cannot a workman who is injured by the negligence of a foreman or a brother workman, now proceed against that foreman, at law, for damages?—Yes.

693. Assuming that workmen were a class sufficiently wealthy to pay the damages that might be awarded against them in those cases, do you think that the question of extending the liability of employers would ever have arisen?—Certainly not.

694. Do you think that if a man loses his power of compensation because the person who caused the injury is without sufficient means to make it worth while to sue him, the law should give him a remedy elsewhere?—Yes, in the case of master and servant, because it is obvious that the master finds it for his interest to employ a servant to act for him under his immediate personal direction, which is the difference between a servant and an agent; and in that case I think there is considerable reason for saying that the employer should be liable. The honourable Member is aware that that is exactly the difference between an agent and a servant; that a servant is under the personal immediate control of the master and of his agents, if the master chooses to put him under them, as to every particle of what he does.

695. Do you not think that to hold a man, through whose immediate malfeasance or carelessness injury may happen to another, responsible for that act is more likely to induce care than if a third person were held responsible?—I think I understand the purport of the question, but it is difficult to answer it simply; but if I might answer it as I wish, I would say that having two persons liable is more likely to induce care than having only one liable.

696. Do you find, generally, that making two persons liable is more likely to induce care?—Yes, if they are both individually, as well as jointly, responsible.

697. Do you not think that the reflection in a man's mind that anyone injured by his act of carelessness would be liberally compensated at the expense of another would be likely to lower his sense of responsibility?—It would have a tendency in that direction, if it involved the exemption of himself from liability.

Mr. *Shaw Lefevre.*

698. The remedy to the workman against the principal agent or principal servant of a railway company, or other large employers of labour, is not worth much, is it, as a general rule?—In my experience, it is very seldom that it is.

699. If it is not possible to sue the employer, and each one has to sue the particular person who is liable, as foreman, is he not frequently not worth the costs of going into a county court?—No, he is not worth a halfpenny.

700. The result is that there is practically no remedy to the person injured?—Practically there is no remedy.

701. In employing an agent, as you make the employer liable you would still have a remedy against the agent for injury or loss which has resulted through him?—Yes, but it is equally worthless.

702. But still it would rather tend on the one hand to make him employ competent servants, and, on the other hand, responsible servants?—Yes, that was my former answer to a question put to me by an honourable Member, that the interest to the master, if he is made liable, as I suggest that he should be, would be so very much

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much the greater in the prevention of accidents than the interest of a mere foreman can be.

703. If a master himself interferes in the management of a concern, he is responsible, is he not, because they really are his own actions?—He is now.

704. If he employs a servant as an agent he is not?—He is responsible for the proper selection of the agent.

705. If you make him responsible for the agent you would throw upon him a much greater responsibility for employing responsible and careful agents?—That is the tendency of the proposal.

706. In that respect you think it would be an advantage in inducing greater care in the conduct of trade?—It seems to me to be so.

707. Do you recollect the case of Bryden and Stewart in the House of Lords, which was decided by Lord Cranworth, in which Lord Cranworth laid it down that it was the duty of the employer to take all reasonable measures that the plant shall be in a proper condition?—I think that that is one class of cases which are exceptional. I think that is one of those classes in which you get into another principle, namely, the duty of everybody to keep land over which he has control, in a proper condition. I will not be sure, but there is a class of cases of that sort.

708. I do not remember that it was laid down that the doctrine was confined to dangerous trades?—I cannot answer the honourable Member's question.

709. Then, again, there was a subsequent case of Wilson and Merry, in which the same doctrine was laid down, which recognised the principle laid down in Bryden and Stewart, that a master who employs a servant in a work of danger is bound to exercise due care to have his tackle in proper condition, so as to protect the servant against unnecessary risks; but so far as I can understand, that doctrine has been frittered away in subsequent cases, and it now comes to nothing?—I think that if the honourable Member will look at the cases upon that subject he will find it comes to nothing, very much for this reason: that they almost always assume that there is something like constructive or actual knowledge of unsoundness on the part of the master on his agent.

710. Looking to that fact, do you think that it would be desirable to lay down in any fresh Act more clearly, that it is the duty of an employer generally to maintain his machinery and plant in proper condition?—I have no doubt it is his duty now, as regards anybody but a servant, to cause reasonable care to be used, and I think that the exception should be removed.

711. Would it be well to add to your list of remedies a rule laying down that an employer should be held bound to keep his machinery and plant in proper condition?—I should like further consideration before putting it quite so generally as that; I think that something in that direction is desirable.

712. That has been already done in the case of ships, inasmuch as the shipowner is liable to the seamen?—I am not aware what the effect of the Merchant Shipping Act of this year is.

713. Are you aware that there was a clause in the Act of last year making a shipowner responsible to his seamen for the seaworthiness of his vessel?—I had forgotten that.

Mr. *Shaw Lefevre*—continued.

714. You stated that you would advise an exception to be made from the general principle that you would lay down as regards menial servants, on the ground that a servant knows the care which other servants take, and what they are, in fact, and would therefore be able to warn the master of the negligence of a particular servant, or to leave the service?—Yes.

715. Do you think that that doctrine might be extended to other trades, for instance, to the shipping trade, so as not to make the shipowner responsible to the seamen for the negligence of other seamen on the same ground?—That, I think, is a question of balance of opinion on the proved hardship in the particular case. I am not sufficiently acquainted with shipping to offer any opinion. Of course one is more or less acquainted with domestic servants, and is able to form an opinion, but I cannot speak about merchant shipping.

716. You cannot say whether it would be reasonable to extend that doctrine to other employments besides that of domestic service?—I should be inclined to say that it might be a very hard measure to make the owner of a ship unlimitedly responsible for the negligence of a seaman.

717. He is now so responsible to outsiders; take the case of a collision arising between two vessels from a bad look-out of the seamen in the one ship; is not the shipowner responsible to the owner of the other vessel and to the seamen of the one vessel for the damage that results?—Not necessarily.

718. Supposing there has been a bad look-out or negligence in putting the lights up?—I take it that he would not be liable unless the negligence was on the part of somebody whose duty it was on board the ship to perform the work, or who had undertaken it with the consent of the superior. If somebody had entirely out of his own head undertaken to steer without any sort of authority, implied or expressed, as between him and the shipowner, I should doubt if the shipowner would be liable.

719. That may be an extraordinary case, but I am now putting an ordinary case of a bad look-out by a seaman whose duty it is to look out, and who does not look out, and a collision occurs, is not the shipowner responsible to the owner of the other vessel, and also to the seamen?—Generally speaking he is.

720. In the proposed alteration of the law that you have suggested, he would be responsible to the seamen of his own vessel, would he not?—Not under the suggestions which I handed in, because I put them rather as suggestions which would leave untouched the exception as between men who are precisely co-ordinate and engaged on the same employment. I mean if two men were in the same top, and one of them was negligent and injured the other, the shipowner's liability would not be increased by the suggestions which I have made.

721. Would it be a case where you would always make the shipowner responsible to the seamen for the negligence of one of the seamen employed in the ship?—Personally, I cannot answer the question for want of sufficient acquaintance with merchant shipping. I say I think that in that, like all other cases of a similar description, an exceptional reason may be established for exemption, but it ought to be shown, and

Mr. *Shaw Lefevre*—continued.

and *primâ facie* there ought to be no such exemption.

722. You think it possible to draw a line which would include the one, and exclude the other cases?—Quite possible.

723. Are you aware that the Scotch courts have drawn the line, though not on the doctrine of common employment, to anything like the extent that the English courts have gone?—There was a distinction in the doctrine of vice-principal, a peculiar Scotch doctrine, which was overruled lately. That is the only one I know of.

724. Was not the wide distinction there this, namely, that they did not carry the doctrine of common employer to the case of servants who were employed at totally distinct work?—I am not acquainted with the Scotch law.

Mr. *W. Stanhope.*

725. Are you acquainted with the working of the Mines Regulation Act?—Very little. I hardly know anything about that subject.

726. Can you tell me whether that Act has made any alteration as between the position in point of liability of a certificated manager of a mine and the ordinary manager of a mine, such as existed before the Act passed?—I apprehend that it has been lately decided that it makes no difference. I think I recollect a decision that the master was exempt from liability to his servants for the acts of another where the negligence was the negligence of a certificated manager under the Mines Act.

727. Do you think that that in any degree takes away the value of one of the objects of that Act in ensuring that there should be certificated managers?—It strikes me that it goes a good way to neutralise it, and that it might nullify it.

728. Do you think it desirable that some alteration might be made in that respect in the law, that a certificated manager should insure for the master, so to speak, greater liability with respect to the safety of the men working under him than an ordinary manager?—It is such a difficult question that I should hardly venture to express any opinion about it without having more carefully considered the whole policy of the Act.

729. You are of opinion that this decision, which you have mentioned in the case of Howell *v.* The Landore Steel Company, does in some degree apparently nullify the intentions of Parliament in introducing those certificated managers?—Yes.

730. I suppose the railways have become so general a means of conveyance that those large compensations to strangers suffering from accidents do not arise in the same degree as they formerly did?—There is no doubt that the law of negligence is being worked out by railway companies at their own expense.

731. Do you think that that has arisen in any degree from rather you may say the pressure of the public than from the mere action of the law; that the public have felt themselves deprived of any other mode of conveyance, and have been obliged to pay their money and be conveyed by the railways, and therefore they are exercising a pressure to oblige the companies to use every possible precaution to convey them safely?—I think I ought to modify my first answer a little upon that, because I recollect now that cases about the liability of the owners of stage coaches



Mr. *W. Stanhope*—continued.

Mr. *Wright.*

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for negligence were very frequent; and I think although the law has been very much cleared up by the railway companies, still the question very frequently arose before railways were established; I think it began with the stage-coach companies.

732. In the days of stage coaches persons could travel by their own conveyance; what I want to ask you is whether the fact that persons cannot travel in their own conveyances, but must go by railway, has not produced a pressure which is more a matter of general consideration to the public than a matter of law?—No doubt people feel that they are compelled to go by railway, and therefore the railway ought to pay if it hurts them.

733. But then does not that on the other hand make an essential difference between the passenger and the guard, or the stoker who is more with the train, who knows all the risk he has to run, and accepts the employment with his eyes open?—I do not think it makes much difference; it may make some difference, but the ground on which judges put it is, that a knowledge of the risk is taken into consideration in the wages as the ground for exemption which the Committee are now considering, and I say that is too wide a statement; and it disproves itself because there is an equal knowledge of the risk in a great many passengers, yet nobody proposes that the fare should be diminished to the passengers on account of the risk which they incur in travelling. All I mean to say is, that it is not a satisfactory principle for the state of the law; I do not deny that to some extent it deserves consideration.

734. I suppose you will admit that, under equal circumstances, and as a general rule, though there may be no direct stipulation, the wages in an employment which has hazardous risks would be higher than those in an employment which requires an equal amount of skill and is not attended with so much danger?—I am told that it is not so at all, or, at any rate, only in very extreme cases, but that, generally speaking, the rate of wages does not depend upon considerations of that kind at all; it is a person's comfort and convenience and the reputation of the employment, and the comparative scarcity of persons who can do it, on which the rate of wages depends.

735. Are you aware that the wages of men working below ground are very much higher for the hours that they are employed than those working above ground who require no more skill, or where the skill is even?—It is very much more uncomfortable working under ground than above ground; that is one reason.

736. You think they do not care about the risk?—I am unable to say from personal knowledge, but that is what I am given to understand, but also the fashion in the rate of wages continues long after the cause is altered.

Mr. *Macdonald.*

737. I am quite aware that you do not know anything about coal mining, and therefore I would not have dragged that subject before you, but as it has been introduced I feel bound to put a few questions to you, but they shall be of a very simple character. In the first place, you have ample opportunities of knowing about iron works in various parts of the country?—Yes, a good deal.

738. So that you are not ignorant about what

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Mr. *Macdonald*—continued.

the risk of iron making is?—No; I have seen a great deal both of coal miners and iron miners, and know a great deal of their feelings upon the subject.

739. In conducting a mine it may be divided into six divisions, and each of those divisions is under a particular person, who has charge of carrying it out for the benefit of the employer, but still they are under a common manager; would you look upon the person who conducts that portion of the mine as a fellow servant or collaborateur coming under one common employment, and therefore that the owner should not be responsible for the manager of any one of those six divisions?—Without more acquaintance with the management of mines I cannot answer that particular question, but it would be covered, I apprehend, by my general statement that I would make an employer liable, generally speaking, for the acts of all the foremen in the whole ascending line up to the master, generally speaking, especially if their business was concerned directly with the preservation of safety.

740. The fire tryer is not the manager of the mine, but he enters and examines the mine for the employer, and declares that the place is safe?—That is eminently a case in which I am of opinion that the employer ought to be liable for the negligence of the fire tryer if he does not sufficiently examine the mine.

741. You think that the employer ought to be responsible to see that such a person does his duty as a fire tryer, which is a very important employment, and if an accident happens the employer should be responsible also?—As he has to see that the mine is safe, the mineowner must be responsible for having a proper fire-tryer.

742. Any act of neglect on his part you would place upon the employer?—Generally speaking, but not if he went and set fire to the thing on purpose.

743. You have been asked a question about the knowledge of workmen; it is a presumption of law, also, in several decisions that a workman ought to have a knowledge of his fellow workmen, and has the means of acquiring that knowledge more than even his employer. Let me take the single case of the Swaithmain Colliery, where an explosion occurred killing 140 men. It was there proved indisputably that even the employer did not know the names of numbers of the men; do you think in that case it was likely that any of the workmen could have any knowledge whatever of those men?—It is obvious that the workmen cannot be expected to know the personal habits of every other workman in the same large concern.

744. A thousand persons may be employed in a mine that covers a distance of several miles, and at one side you may do an injury resulting in the destruction of the whole of the men; can there be any immunity of employment, or would you consider that the workmen should be liable, but that there should be a freedom from liability on the part of the employer in such a case?—I do not see anything that can be properly relied upon as exempting the employer there, but at the same time it seems to me that the honourable Member has put one of the very hardest cases possible; to hold an employer liable for everything that goes on in a ten-mile underground working may be a very great hardship in particular cases.

Mr. *Macdonald*—continued.

745. I am putting the case to you in its broadest sense, but let me say this, that there is a statute law, or a bye-law, or one of the laws made in conformity with the statute which prohibits a person from moving from one point to another in the mine?—I was not aware of that.

746. With reference to the railway interest, does not a guard start on every occasion with the full confidence that he would be safe; is not that the presumption?—It would be very misplaced confidence.

747. But is not that the presumption?—I think it is rather more true to say that he expects that there will be no negligence; he expects that his employers will do all they reasonably can to prevent negligence.

748. What is the feeling of the passenger?—I should presume that he is generally in the same state of uncertainty as the guard.

749. Not generally, I presume, in the same state of mind as the guard?—I suppose it is only a question of degree; there may be a difference of degree between them. No doubt the guard will know more of the dangers of railway travelling than the passenger, to a certain extent.

750. In what respect do you think he will know more?—Because there are a great number of railway accidents that never come to the knowledge of the public, which the guard is well aware of.

751. That they will occur?—Yes.

752. Has the platelayer any knowledge of what the engine driver is going to do, more than what the passenger has?—Yes, he has to a considerable extent more knowledge; I take it that it is quite clear that a platelayer is accustomed to see engines going by every day, and therefore knows more about the risk that is incurred by trains than an ordinary passenger does; but the difference is not so great as to justify the existing law; I say there is some difference, but not sufficient difference to justify the existing law.

753. We will take the case of an iron work; there is one person who superintends the mill, and another the puddling, and a third, the labourers, all under a general manager; would you hold the person who superintends the mill, and the one who superintends the puddling furnaces, and the one who superintends the labourers, distinct managers?—That is a question of fact. In the case of a particular mine where there are distinct managers, they are subordinate one to another.

754. But under the recommendations which you make, you would consider the owner liable for every one of those various persons, would you not?—*Primâ facie*, and generally speaking, yes.

Mr. *Tennant.*

755. You said, did you not, that you would extend the law of liability of the master to any accident that may be done by the foreman?—Yes, generally.

756. Would you do that even if the act of the foreman that caused the injury was not only unauthorised, but was done in direct contravention of some express orders given by the master?—I think it is well worthy of consideration whether wilful disobedience of orders ought not to be treated as making a great difference in those cases;

Mr. *Tennant*—continued.

cases; I cannot go further than that, because it presses upon every part of the subject.

757. You say that you would extend the master's liability laterally, so as to make him responsible for the act of what you may call a fellow workman, as they are now defined, where they are co-operating in the same work; would you consider that the guard and the engine driver of a train were co-operating in the same work?—That is a question very much upon the line. So far as I am acquainted with railway business, I should say that they are not; but I think it is a question of fact in each case for the jury, as the Right honourable Chairman put it.

758. Not if they were in the same train, the one the guard and the other the engine-driver?—So far as I know of the facts of railway employment, I should be disposed to think that the one was not so mixed up with the act of the other that he ought to lose his remedy in case of being injured by the negligence of the other, but I am unable to say really, without further knowledge upon that point.

759. Would you think that a hewer of coal, for instance, was in a common employment with a man who put it into the "corve," or the man who "hurries" his "corve" to the bottom of the pit?—These are questions of fact in the particular service, and I think it very likely they would be so considered. In any case in which one of them was clearly affected by the negligence of the other, I presume you would have to establish that they were working close together, and working in a joint adventure. But these are questions of fact in each particular case, which can only be solved by a jury.

760. You say that you would exempt a master from liability in the case of menial servants, from their having a more intimate knowledge of each other?—I see reasons for doing so.

761. But supposing a servant had only just come into the employment of the master, what would you say?—That is a difficulty, of course, which would last for a certain time.

762. He could have no knowledge whatever of his fellow servants?—No; but a certain amount of risk must be undertaken by everybody in their affairs. If it is just to retain the exemption given in the case of menial servants, I think the few days necessary to obtain that knowledge must be accepted as a common risk.

763. Would you consider that a gardener was intimately acquainted with the habits of the coachman?—I should think generally he has the means at any rate.

764. And of the housemaid?—There may be many difficult cases put; for instance, a huntsman is in law a menial servant, and it may be very hard that a huntsman should be assumed to be acquainted with all the habits of all the servants in the house, but assuming that there is any principle in the suggestion, it is not damaged by those extreme cases.

765. Those are very ordinary cases which I have put?—I would rather say people who live on the same premises would more properly be called menial servants; I accept that illustration, because although the law does regard a gardener as a menial servant, I think as a matter of principle it is doubtful whether you should not exempt a gardener from it. I accept the law of the case, but if there is an exceptional class that does not affect the principle.



Mr. *Tennant*—continued.

766. You referred to the reports of the inspectors of factories; are you sure that you are right in stating that those working in factories might be held to have taken into account the dangerous nature of their employment in the wages that they receive?—My view rather is that the dangerous nature of the employment seldom makes any difference.

767. But you referred especially to the factory inspector's report?—Yes. I gather from them that the rate of wages does not vary at all, or hardly at all, with the tendency of a trade to shorten life.

768. The tendency of a trade to shorten life is different from the dangerous nature of a trade; the one may be merely from its unhealthiness; we are referring here to the dangerous nature of an occupation, and not to its unhealthiness?—I gather also that they do not consider the risk of accident as any serious element in their calculation of the wages that they receive. I am obliged to speak at second hand upon this; I do not know personally.

769. I understood you to say, in the case of a plasterer letting some lime down from the top of a building, you could see no reason why a workman should not recover damages, while a third person, who was dining with him, should?—No, I do not know of any reason.

770. How would you alter the law; would you narrow the law, or extend it; would you make the master responsible for the plasterer's negligence in allowing the lime to slip on to the head of people below, or would you make the master not liable at all, either to a third person or to a workman?—The tendency of my suggestions is to widen the liability of the master, and not to restrict it; that is to say, to make him liable for injury to his servant as well as to a stranger. The tendency of some other suggestions I rather gather to be to hold that the master shall not be liable to anybody.

771. I think you said that in the case of the wilful violation of an order you thought that the master ought not to be held responsible?—I think that very likely a distinction ought to be made upon that point of wilful violation, but I was not putting the case of wilful violation but of negligence on the part of the plasterer.

772. If the law were altered, would you still retain the liability of the actual causer of the injury?—Certainly.

773. Would you make it an absolute condition that he should be joined in the action if an action were brought by any person?—I have thought about that, and it seems to me that you must leave the law as it stands upon that point. You could not compel the plaintiff to sue both of them, but he can sue them both now if he likes.

774. Can he make his election now?—Yes, or he can join them both in the action.

775. Then if he sued one, and got a verdict, could he sue the other?—I think, under the present state of the law, he could sue both. There would have been a difficulty about the form of action under the old law, but since the Judicature Act my impression is that there would be no real difficulty in the way.

776. Would he get damages, first through both, and then through one?—He might perhaps sue one after the other, or he might sue both together, but there would be this difficulty, that



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having sued both he could not sue one of them again, and having sued one, he could not go against the same man twice, and sue both.

777. You were asked about a collier who took the covering off his safety-lamp. Take a more extreme case: Supposing a collier took a lucifer-match from his pocket and lighted his pipe with it; the master has not in that case put a dangerous machine in his hands?—My answer to that would be the same as in the case of the safety-lamp; that, I think, is a matter very seriously to be considered, whether a master should be held to be responsible for such conduct on the part of the man, even if he is now, about which I am not clear.

778. If instead of its being the collier who did this thing, it had been the deputy having control over him who did it, supposing that he lighted his pipe with a lucifer-match, what would you say then?—I should not make any difference.

779. Would you in that case hold the master responsible?—I would not make any difference on that point.

780. If he were the deputy, and still did such an act wilfully, carelessly, and recklessly, would you in that case make the master responsible?—My answer is the same, that I do not make any distinction on that point; whether it is the foreman or an inferior workman, I am strongly inclined to exempt the master in both cases; but I think it is a matter for the gravest consideration.

781. You could not define more clearly what you think should be the limit of liability, but you think that there should be some limit to that liability; could you define it in any shape?—It is very difficult to suggest any limit.

782. Would you suggest that a workman should not recover more than a certain number of years' wages?—That would probably be the form that it would have to take. Possibly in some trades you might arrive at a better measure; I am not authorised to speak for anybody in particular; but from conversations that I have had with people interested in this subject, I am inclined to think that they would accept something of the kind, some limit of liability.

783. Would you allow a man to contract himself out of the Act if it were passed?—No; I would never attempt to prohibit a man contracting himself out of anything.

Mr. *Eustace Smith.*

784. Do I correctly understand you to say that you think that the rate of wages is not affected at all by danger?—It is very doubtful whether it is affected by it, generally speaking.

785. Do I understand you to mean that the rate of wages as between one trade and another trade is not affected by the different dangers incident to the employment, or do I understand you to mean that in the same trade, carried on under circumstances of ordinary safety, and under circumstances of exceptional danger, there would be no difference in the rate of wages as between trade and trade, or as between different circumstances in one particular trade?—So far as I am sure that I apprehend the drift of the honourable Member's question, I think it is the same in both cases. A man does not consider the risks.

786. You do not think that a man going down a pit, and taking work in a pit, considers at all

Mr. *Eustace Smith*—continued.

the reputation of the pit, and whether it is known to be a well-ventilated, an ordinarily safe pit, or whether it is one about which there are strong suspicions of foul air, and a great deal of gas?—I expect that it is only in extreme cases; it would rather work itself out by respectable and good workmen refusing to go into that pit at all.

787. And, therefore, although the rate of wages might not be affected, the quality of the workmen who might be got would be materially affected?—That may be so in an extreme case, no doubt.

788. It would be very nearly the same thing as to the rate of wages being affected, whether you pay inferior men the same wages, or whether you pay higher wages for the risk?—Assuming all other things equal, it would be so.

789. With regard to the amendments which you think are possible in the law, you wish to maintain the employer's liability; would you extend that to all cases where he has delegated his authority?—Yes, generally speaking.

790. But I am rather at a loss to understand how far you would carry the delegation and sub-delegation which must occur in a number of cases?—I do not limit it at all. I take the rule of law as it now stands, and I say that every one in the chain between the master and the employé, according to the present definition in law of a workman, ought to be *primâ facie* liable to be sued.

791. And that the employer should be liable for every one of his acts?—Yes, within the scope of his appointment.

792. For instance, you would consider the owner of a ship responsible for the act of the carpenter, who is a petty officer, or of the boatswain?—Within the scope of their employment.

793. But, I suppose, that whenever in any way a workman was in any sense a party to the negligence, or a party to the breach of the statutory regulations, you would not allow him to have any claim for damages?—The general principle of law I think would be quite enough to prevent his claiming damages in such cases.

794. For instance, if there was neglect on board ship to put up the lights, you would not consider if a collision occurred that anybody on board would have a claim for damages?—That would be carrying the doctrine of contributory negligence rather far to affect all the innocent people on board.

795. But they are all aware of the regulations; they are all aware of the fact that lights are not put up; it is patent to everybody; and if they never protest against it in any way in a certain sense, would not they all be parties to the negligence?—Certainly that would be a new principle in law. First of all it would be a very extreme case, and secondly, it would be introducing quite a new principle of law that you are guilty of contributory negligence merely because you are aware of something which you cannot prevent, and I think that would be hard.

796. If a person to whom authority is delegated distinctly violates the orders that are given to him, do you consider in that case that the owner should be liable?—As I have already stated, I think it is a matter for the most serious consideration whether if the damage be caused by wilful disobedience of orders the master should in any case be liable.

797. But if it arises only from confusion, and not

Mr. *Eustace Smith*—continued.

not from any wilful disobedience, what would you say?—That is the very thing; negligence means nothing else.

798. The captain orders a man to starboard his helm, and the man at the wheel ports it?—It is the grossest possible negligence if the man does that. But if you hold the shipowner liable at all you must hold him liable in that case.

799. You would still require the workman to exercise some care as to the regulations, and whatever regulations they were they should be carried out?—If you have the power; but, practically, you could hardly put it into a law; you must leave that to juries. You could hardly say that it is the duty of every man employed in a mine to inform the manager about every violation of duty.

800. You think that the question of contributory negligence should be left to the jury?—Yes, I do. I think that would be just and right. I would let the jury settle that point.

Mr. *Shaw Lefevre.*

801. I understand you to say that in amending the law you would allow the workman to contract himself out of it?—Yes.

802. Do you think that it would really have any effect; would not the universal result be that all the large employers would contract themselves out of it?—No, I think not. That is a subject which has been very much debated recently, and it seemed to me that whether that would be the case is to a considerable extent a matter of accident. If there are a few years favourable to the workmen, in which they are able to make good terms for themselves after the law is passed, a kind of fashion gets established in the trade, which the masters cannot easily afterwards upset, or it may be the other way.

803. But in making a great change like this, would not the first impulse be for the employers to force a contract upon the workmen?—I think that a great many masters, especially in the small trades, would do so, but there are a great many masters in the more important trades who would not think of such a thing.

804. Take the railway companies; would not the railway companies make it a condition of their service that a man should not be subjected to this new law?—I should doubt whether even a railway company would try it. I think, however, that they are rather exceptionally situated in that way.

Mr. *Shaw Lefevre*—continued.

805. There is nothing to prevent a man contracting himself into such a law already, is there?—That is much more difficult.

Mr. *Macdonald.*

806. Do you not think that it would have a tendency to create recklessness on the part of employers and men, if you were to allow parties to contract themselves out of the law with respect to dangerous work?—So far as it operated, no doubt.

Mr. *Knowles.*

807. Do you think that if a master was made responsible in case of all accidents to the men, the men would be disposed to be quite as careful in looking after their own protection, or that it would induce carelessness?—I do not think that could make any difference, because at present the men themselves are practically not liable.

808. For instance, if a man knew that if he met with an accident (I do not mean to say that he would wilfully run into danger), would not he be disposed to be more careless if he knew that payment was provided in the case of accident, and that the master was responsible?—I do not think that that difficulty really presses, because the negligence of a man with regard to his own safety would, even under the proposed Bill, prevent his recovering, and I think that there is no doubt that there is a considerable tendency amongst workmen to be negligent as regards their personal safety now, and I do not think that they would be affected by this consideration.

809. Do you think that it would be an inducement to be rather less careful than otherwise?—I think that the only influence of any consideration of this kind would be that even supposing he damaged his fellow-workmen in the mine, the employer would have to pay for it; but I should think that those things would not operate much in real life.

Mr. *Macdonald.*

810. Do you think that the travelling public, who have so much interest in railways, are reckless in any sense of the term reckless because of the relief that they get?—No, not generally.

Mr. *Wright.*

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Mr. HENRY BROADHURST, called in; and Examined.

*Chairman.*

811. WHAT is your occupation?—I am Secretary of the Trades Unions Congress Parliamentary Committee.

812. Are you aware of the subject that this Committee has been appointed to inquire into, namely, the liability of masters to their servants for injury sustained by negligence?—Yes.

813. What is your opinion upon that subject as to the liability?—The opinion that I have held on that is entirely in support of the Bill which was introduced to Parliament by Mr. Macdonald; I do not know that I can say more than that.

814. Will you give your reasons for that opinion?—My general reasons are that I have felt for a long time that the present law regarding compensation is most unsatisfactory. I have felt it from the nature of my trade being somewhat dangerous. We meet with many accidents that are caused through extreme negligence, and that the employers should be liable to compensate the workmen in cases of that kind.

*Chairman*—continued.

815. Would you tell us what your trade is?—A stonemason. The society of which I am a member, that is the Stonemasons' Society, pays a very large sum annually for accidents, and the greater part of those accidents are caused through preventible causes. I might say that altogether we pay on an average about 1,400*l.* annually for accidents; and I should say 800*l.* of that is paid in compensation for accidents that might with a little more care have been prevented.

816. Will you tell us the sort of accidents to which you allude in which those 800*l.* are paid, and which you think might be prevented?—They are chiefly accidents caused by insufficiency of

Mr. *Broadhurst.*

Mr. *Broadhurst.*

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*Chairman*—continued.

of scaffolding and bad material used in scaffolding. The other amount, say something like 600 *l.* a year which we pay, is paid in cases of paralysis and blindness, masons' eyes being struck by pieces of stone and steel from the chisels which we use, and no compensation law would, of course, ever make employers liable for accidents of that kind.

817. Are those latter things the result of accident, or of the constant use of machines that have a tendency to injure the sight?—Purely accident.

818. How would it be possible to avoid them; what sort of care would render it possible?—As to accidents where the eye-sight is generally injured it would be almost impossible to prevent those, unless by a system of wearing eye-protectors.

819. Do the men wear them now?—No; it would be extremely objectionable to employers; I have known attempts made to introduce a system of eye-protectors, but managers generally think that it somewhat interferes with the men's quickness of eye, and they are objected to.

820. With regard to the other class of accidents, do I understand that the 800 *l.* a-year is paid entirely for accidents occasioned by bad scaffolding?—For bad scaffolding and bad material, breaking of chains, travelling gear, and scaffolding poles and planks.

821. What number of persons does your society include; what is the number of persons that furnish the class on whom you spend this 1,400 *l.* a-year?—Twenty-four thousand to 25,000 members.

822. How many persons do you think are injured by preventible accidents in the course of the year?—I should say it would average something like 15 or 16 persons in the year; that is amongst whom the 800 *l.* would be distributed. In the case of men being partially injured, so as to prevent them following their employment, they get 100 *l.* compensation from the society; and in case of death by accident, that is, if they are killed on the works, their friends get 50 *l.*

823. What should you say was the number injured in the course of a year, either fatally or otherwise, so as so require assistance?—Taking the whole of the cases, I should say that it would include about 20 or 24, perhaps.

824. Out of 24,000 people?—Yes.

825. Then it would be about one in a thousand?—Yes, that is in my own trade of stonemason; one section of the building trade.

826. Can you recommend to the Committee any particular law which you think ought to be passed, or have you considered what the law should be?—I could not possibly recommend a better law, in my opinion, than the first clause of the Bill, which was before Parliament a short time since.

827. Have you got that clause before you?—Yes.

828. I presume you are speaking now not only for yourself, but as the representative of the body to which you belong?—Yes, as the Secretary of the Parliamentary Committee.

829. Will you have the kindness to read that clause?—"Where any action or proceeding is brought for recovery of damages, or of compensation in respect of bodily injury or loss of life, alleged to have been occasioned after the passing of this Act, to any person, it shall not be any ground of defence that the person by whose negligence the injury or loss of life is alleged to have been occasioned, was employed in a common employment with the person injured or killed, or that the risk of injury or loss of life was knowingly or voluntarily incurred by the person injured or killed in the course of his employment."

*Chairman*—continued.

830. That is what you would consider in substance would remedy that grievance of which you complain?—Yes.

831. Is there anything else which you would like to state to the Committee on this subject?—Nothing further than that I should very much like to see a Bill embodying the principles contained in that clause become law.

Mr. *Tennant.*

832. You say that the law is in an unsatisfactory state at present, do you think it would be right to make a master liable for any wilful act of a servant by which another servant was damaged?—That is rather a difficult thing to answer, because one might be liable to be misunderstood. If a man wilfully does damage, or commits acts which would lead to loss of life, he is criminally responsible at the present time, I think.

833. I ask you, do you think that a master should be held responsible in damages in the case of accident arising from the wilful action of a fellow-servant?—I really think he should be primarily responsible, and that he should be held liable to compensate his servant for acts that are now liable to compensation if occurring to a person not in his employ.

834. On what principle of justice do you think that is founded?—For instance, if I am engaged in my own employment as a stonemason, and working in a shop immediately beneath a building, which is generally done about London and in all our large cities, for the sake of economy of space, and a bricklayer or scaffolder wilfully throws something down, which comes through the roof of the shop, and maims me for life, I think that some one should be liable to compensate my family for an act of that kind. The employer is responsible in an ordinary way for a man whom he employs, and I cannot see to whom I should go for compensation in a case of that kind if I did not go to the employer.

835. Do I understand you to say that if one workman throws a brick at the head of another workman, and injures him, the master should be held civilly responsible for that Act?—No; in putting it in that way I should say not, because that would be a personal difference between the two men.

836. You said that if he wilfully let something drop from one floor to another floor, supposing he let a brick wilfully drop from the top of a building on to the head of a man working below, do you think then that the master should be held responsible in damages?—My understanding of a wilful action would be, a man walking along a stage wilfully kicks something off the side, knowing that it was very liable to cause great injury to some persons below; I mean to say that, in my opinion, the person injured should be able to sue the employer for damages. But if one workman should throw a brick or something on to the head of another workman through personal malice, I cannot see that we would think of holding the employer liable for

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Mr. *Tennant*—continued.

an accident of that kind, which would hardly be an accident.

837. I do not see how you are going to draw a distinction; one man is walking along a plank; a brick is on the plank; he wilfully shoves that brick off with his toe as he passes; people are working below, and someone is damaged; you think that the master should be responsible in such a case as that?—Yes, I do; because for this reason, that I apprehend in the case that is put, the workman would carelessly kick the thing on one side, but not with the express purpose of injuring a particular person.

838. If he injures one or a lot of persons it is just as bad?—Just so. If the result of his carelessness is that it causes injury to some persons, then I hold that the employer should be responsible.

839. I am talking now about a wilful deliberate act on the part of a workman, not carelessness?—If you put it as really a wilful and deliberate act of injury, I really do not think that we could hold an employer responsible for it.

840. Take, for instance, a familiar case that we have had here several times, through a collier below lighting his pipe, the gas exploding and several persons being killed; would you think that in such a case as that the master should be responsible?—Decidedly. That is shifting the ground to some extent from the way in which you put the other question.

841. In the case of a man who takes a lucifer match concealed in his pocket, and contrary to all the orders that are issued for the regulation of the pit, deliberately strikes that lucifer match and lights his pipe, and the pit is blown up, do you think that the master should be responsible?—Yes, because I cannot imagine for a moment that a well-trained, efficient, and skilled collier would ever be known to do such a stupid thing as that, or such an utterly wilful and malicious act as it must really amount to. I should imagine that where an accident of that kind occurs it is committed by men who are strange to the work of mines, such as an agricultural labourer recently come into the mine, or in times when mines were exceptionally busy. I am told by a very high authority in Wigan, that it was not unusual for even painters, and bricklayers, and tailors, and shoemakers, to go to work in the mines, and if a person of that kind were working in a mine, it might be understood that he would be careless, and that, perhaps, through not being trained to the serious nature of the work, he might commit such follies as that.

842. I am not supposing any of those cases. I am supposing the case of a trained collier doing such a thing, never mind whether you think that is common or not, but I am assuming that he does such a thing as that, would you then say that the master was liable?—Yes, I think so.

843. Although the man, in ordinary cases, was a thoroughly careful man, and a man who understood his business well, yet, on one particular occasion, contrary to orders, he lit his pipe in the pit, knowing what the consequences would be (or at any rate, he ought to have known what the consequences would be, and probably did), do you still say that the master should be responsible?—As a matter of principle, I think that the employer should be responsible for this, although I never expect to see a law that would make him responsible for it. I think that that would



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Mr. *Broadhurst.*

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be right; because I go upon this ground, that if I was one of the injured persons, what recompense would it be, what consolation to my family, that the act which caused my dismemberment and blowing to pieces should have been caused by a fellow-workman; because I had no control over that fellow-workman; I did not set the man on; I did not employ him; I had no power, and no authority; and if I saw him doing a wrong thing I had no authority whatever to correct him, or to order him to change his conduct.

844. You have put yourself in the position of being an injured man; but will you put yourself, for a moment, in the position of a master; would you then say that it was a good law?—I am here in the position of speaking of what I consider should be the law, from a workman's point of view. I rather think that an employer might differ from this opinion.

845. You say that a great number of accidents happen from preventible causes; is it not the fact now that a master is responsible, in the event of the scaffolding being insufficiently put up, or defective or unsound materials being used in it?—No, I think not. We have a case pending now, the case of Shell *v.* Webster. In that case the accident occurred in 1873, on the Holborn Viaduct. Shell was a mason, employed on the works; a large weight of stone was placed upon an ordinary railway truck, instead of being placed on a square stone truck, and while engaged in lewising, that is, putting the lewises in by which they lift the stone, the truck tipped, and the result was that Shell was borne down by the stone, and very much injured; his thigh and leg were broken in two places. He was a member of our society, but he entered an action on his own responsibility, and obtained a verdict for 250 *l.* Mr. Webster appealed against the decision, and the case was referred to the judges in banco, and they confirmed the verdict of the jury, namely, 250 *l.* damages. The defendant again appealed to the Court of Error, and the Court of Error decided that he is not liable to compensate Shell, inasmuch as he was under a superintendent, and that Mr. Webster himself personally had not superintended the loading of the stone on the improper trolly. The verdict, of course, stands "nil."

846. Is that a recent case?—Yes; Shell gave notice of a new trial which is pending, provided he can find means with which to go on with it, but after the number of decisions which have been referred to by the legal gentlemen, I could not see any hope whatever in spending any further money in pursuing the action; in fact the question was debated at one of our large lodge meetings last night, and I think they pretty well decided against pursuing the case further.

847. Would you make the fellow-workmen responsible at all in any sort of way?—I do not see how we could make the workman responsible except criminally; which he already is.

848. Take some person in the position of responsible agent of the firm, would you think that he ought to be made primarily responsible before the master was attacked?—I do not think so; I think that that would be a very unsatisfactory course to pursue.

849. You would rather go directly at the master?—Yes; because we should get much better inspection, and much better superintendence.

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850. Would you, in particular occupations which are dangerous, allow a workman to agree with his master that he should take all the risk upon himself?—I do not think that that would be at all satisfactory or advisable; and it would lead in many cases where accidents are most numerous, that is where the labour is most unskilled, to the men being led to sign very uneven and unequal contracts; I am afraid that that would be the result, and I should be very much opposed to the men signing contracts of that description; in fact, I should advise them not to do it.

851. But would you not advise that it should be left to their own discretion as to whether they would sign or not?—They would be, under any circumstances, left to their own discretion, but were I asked my opinion by the men I should say "No"; I should not advise it.

852. Would you allow men, by law, to arrange with their employer that they will undertake risks?—I think that would be very unadvisable.

853. Then you would absolutely prevent them making such contracts?—Yes.

854. Would you put any limit on the liability of the master?—I do not think that that would be at all necessary. I think that the juries, as a rule, would very fairly estimate the damages necessary in most cases.

855. Would you have no limit whatever?—No; I do not think it would be necessary where the damages are assessed by juries.

856. Again, you are speaking, of course, from the workman's point of view when you say that it would not be necessary?—I do not think it would. I have never heard an opinion expressed that such a law would be necessary.

Mr. *Eustace Smith.*

857. I think I understood you to say that you are against any permission to men to contract themselves out of the operation of such an Act as you wish to see carried?—That is my opinion.

858. You do not think that there should be any limitation of the amount of liability in the case of the employer, but that it should be left to the jury to settle?—I think so.

859. Would not it be putting a man with a large family at a very serious disadvantage, as compared with a single man. Take the case of a man who has got a wife and 10 children, and he seeks for employment, and a single man asks for employment at the same time; I am speaking of some trade in which there is a considerable amount of danger and probability of accidents occurring, as an element which must be taken into consideration; would not this man who has got a large family be at a considerable disadvantage in the employer's eyes as compared with the younger single man, who had got no family dependent upon him?—I do not think so; taking the generality of the trades in the country, except in mines, of which I cannot speak, the number of accidents annually occurring are so very few, compared with the number of men employed, that I think that although the Bill to which I have referred was thought to be very strong or exacting, yet if even it passed with all its rigour, it would not be a heavy tax on the employers, but would be very light indeed, except in some works that are exceptionally badly managed compared with others. In the new law courts, which are now in progress, I do not know that I ever remember more accidents occurring on a job in the same time,

Mr. *Eustace Smith*—continued.

with the same number of men, than have occurred there; there the number of accidents is what I consider exceptionally high. In less than two years there have been from 20 to 25 serious accidents, and five, I think, of that number have proved fatal within a few hours of the accident, and two, I think, occurred a week ago yesterday. Unless there is more plant, and unless the machinery is better superintended, I should say that the accidents there would be rather alarming. I think everyone would say, that a law which would lead an employer to have better superintendence and more plant, would be a very good law indeed. If you take the number of very respectable firms, the firms who do the large works, the number of accidents occurring is very few indeed; it is astonishing the small number of accidents that occur in works like the Manchester Town Hall, which is a large and important building, and there were very few accidents there.

860. To come to the mining districts; you make an exception of the mining interest which is the very one which I thought would be very much affected by the question which I put before I found out that you were acquainted with it, therefore I will not pursue that subject further; but you have alluded to the number of accidents that occur from deficient plant and insufficient quality of material; do you really think that there is a considerable amount of gross negligence or gross penuriousness on the part of employers with regard to that?—Yes, I do; on the part of employers through their agents, that is to say, their foremen and managers, who should be in every sense of the word the representative of the employer in the matter of liability.

861. You think that the agent is so anxious to please the employer by bringing the work to a profitable conclusion, that he is apt to scamp the plant and scamp the quality of materials, so as to a certain extent to endanger the lives of the workmen?—Yes; I have witnessed a great many deaths from accidents on buildings, especially when the first block of the Foreign Office was building in Parliament-street; one thing that I especially noticed with regard to that class of accidents was, that it is very rare that the jury come and visit the place to investigate it in any way whatever. I think that a very bad thing, and it causes great complaint. There are a large number of accidents in which I never knew a jury to come and investigate the cause of accident.

862. You mean the coroner's jury?—Yes.

Mr. *Knowles.*

863. You admit that your trade is a dangerous trade?—Yes.

864. And you state that many accidents might be prevented?—Yes.

865. Are none of them preventible by the men themselves?—Yes; no doubt some accidents are preventible by the men themselves.

866. Would you, in case of an accident occurring that might have been prevented by the men themselves, hold the master responsible in damages?—Yes, if they were ordered to go on with the work, and do it in a way which led to the accident; and if they were ordered by a manager, I should hold that the employer ought to be responsible.

867. Then as regards the accidents that occur to workmen from the steel and stone in your business of stonemason, have you ever known a

case

Mr. *Knowles*—continued.

case in which the masters have objected to the men wearing eye protectors?—Yes.

868. On what grounds?—On the ground of the obstruction to the sight; the men are not supposed to see so quickly and clearly through them as they would with the naked eye.

869. Take the case of a workman, and there are some at all events, all over the country, that have been provident and saved money, if he wilfully injured another workman, do you see any objection to proceeding against him for compensation, he being the wrong doer at the time?—I apprehend that were anything of that kind to be attempted, it would be under the direction of the law altogether. In all cases of accidents and injuries I have always understood that employers are liable for the acts of their servants in cases of accident of the character of which we are speaking. I should like to see some law of the kind devised, that an employer is liable for the consequences of the acts of his servant to a fellow-servant.

870. Although the workman who commits the wrong act may have sufficient means to compensate it, you would not proceed against him at all, but would proceed against his employer?—That would be a matter for the employer. If a man had wilfully led the employer into expense, and great costs, I should imagine that the employer would have a very good case at law to sue the man.

871. You would not at all hold the man himself responsible for anything of that kind, whatever means he might be possessed of, or whatever he had represented to his fellow workmen?—It would be a very unfair principle to go upon, because there are so very few workmen who would be worth anything if they were sued.

872. Is it really your opinion that there are very few workmen that have saved money?—I did not say that; a large number of workmen have saved money, but it is possible that their wages do not always admit of their saving anything worth naming; any large sum amounting to hundreds, or anything like that, every good workman saves more or less.

873. As secretary of such an enormous association or society as you are, could not you put your finger on a great many men who are in the possession of hundreds?—Some, but the men that I have met with have generally had some money left them in some way or another, apart from services; but the general body of skilled mechanics have not an opportunity of amassing anything like a considerable sum of money out of their weekly wages.

874. What do you call a considerable sum?—I should say two or three hundred pounds.

875. You think that there are not many possessed of that?—Very few indeed.

876. Or that have not got cottage property, or other property to that amount?—A very small per centage.

877. Have you ever considered the effect that such a Bill as you have been quoting from would have upon the trade of the country generally, if it became law?—I do not think the effect on the trade of the country generally would be anything serious.

878. You think it would not be the means of crippling trade, and increasing the price of production?—I think not; as I mentioned just now the number of accidents occurring are few, in



Mr. *Knowles*—continued.

comparison with the large number of men that are employed.

879. In speaking of accidents, probably you mean those accidents that disable a man, or lay him up for a considerable time from his work; are you not aware that there are hundreds of accidents occurring every day in the country, perhaps small, but so as to stop a man from his work for two or three days, such as getting his finger cut, or what I call small accidents, which are the most numerous?—By far the larger number of those accidents are accidents that the employer would not be liable for under any law; the men are engaged on his work, and by some slip of the tools with which he is engaged, or something of that kind, he nips his finger or thumb, and it disables him for a day or two, and the employer could not be liable for an accident of that kind.

880. You would exempt the employer from liability in those cases?—Yes, there are a great many accidents of that kind for which the employer could not possibly be liable in my own trade; the men are subject to broken blood-vessels, from the heavy nature of the work, lifting heavy weights. It is a very hardworking trade, but to hold an employer liable for an act of that kind would be, I think, preposterous. I do not think anyone would ever imagine that for a moment, or for the loss of sight by the breaking of the steel of the chisel, or anything of that kind, we never proposed to hold the employer liable.

Mr. *Wyndham.*

881. Speaking of those accidents from scaffolding, and also in your employment as a stonemason, do you think, generally speaking, that they are the results of negligence of the foreman or of the workmen in not carrying out the foreman's instructions?—They arise from the negligence of the managers. The workman would naturally take as much care to provide as good a platform as he could possibly do, but that is entirely under the direction of the manager.

882. You think that these accidents to which you have alluded, arise more from the negligence of the foreman than from the workmen not carrying out the instructions of the foreman?—Yes.

883. Are foremen members of a union as a rule?—Very seldom.

884. The men who erect the scaffolding itself are members of the union?—The scaffolders that are employed are not mechanics.

885. Therefore they are not recognised by the union, and not, as a rule, members of the union?—Not of our union, but they have unions of their own sometimes.

886. That would give them a community of feeling, would it not, with the people with whom they were working?——

887. They are also exposed to a common danger with them, are they not?—Yes.

Mr. *Cawley.*

888. Will you tell us what was the particular nature of the accidents which you say have been so numerous at the new law courts?—I attribute most of them to the insufficiency of the plant, and the bad materials used.

889. What has been the nature of the accidents?—Chiefly falling through the scaffolding where



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a hole has been left in the scaffold, through the insufficiency of the planks dropping through; two or three accidents have occurred through the breaking down of the travelling jennies (that is a term used in the trade), which they use for carrying the stone backwards and forwards, to fix and put it in its place; some of them are very insecure and not strong enough for the work; there have been two accidents with those; others have been chiefly from the insufficiency of the scaffolding round the walls.

890. By insufficient do you mean that they have broken down, and that the men have fallen with the scaffold?—Yes, in one or two cases I think there has been a breakdown, but in most of the cases it is where the scaffolding would be too narrow, or narrower than it should be, and the consequence is, that if a man make a stumble, which he is very liable to, there is nothing to prevent him going down. On a well-managed work, it is usual to keep a sub-scaffold, as it were, below the one upon which the men are actually engaged, so that in case of a man making a slip in the first case, he has a chance of being caught a few feet further down; but it is very unusual, on the job to which I refer, for any sub-scaffolding to be left.

891. As a matter of fact, you have mentioned six specific cases out of 22 or 25; how many of the others do you think were cases where men stepped off the platform and dropped?—I could not give you the particulars of any case, not to be so precise. Of course I am not working there, but there are some 300 or 400 of my trade there, and it is a matter of common talk amongst the men.

892. Then you have not got the actual statistics of those 22 or 25 cases?—Not the particulars of the accidents.

893. Supposing one man is working on a scaffold which is only 20 inches wide, and he has been accustomed to work on one that is 30 inches wide, do you think that if he goes on the scaffold and oversteps the 20 inches, and falls down, that is the fault of the master?—Yes, for this reason; any careful employer would always have a guard along the side of each scaffold in that case, where, if a man stumbled, there is something to lean against, instead of a space through which to fall.

894. That may be a wise precaution, but certainly my observation does not lead me to the conclusion that it is at all a very common practice to put a rail to protect them; but I want to direct your attention to this: say that a man is going on to work, not on the assumption that everything is right, but he sees that he has only got 20 inches to stand upon, I want you to say whether you think that, having that before his eyes, he is not bound to exercise the proper precaution to keep just within the 20 inches, although it might be safer to have 30 inches, is the master to be responsible, because the man oversteps it and tumbles down?—I do not think that a workman should be placed in this position; that is to say, if he has the stage pointed out to him, which he knows to be dangerous and liable to lead to injury, he must either accept it, or leave the work, and go off without employment. I do not think it is a fair position to put the workmen in, or a temptation to which he should be subjected. If a manager or a foreman sends an ordinary workman to a place of work where there is possible danger, I mean to say that the person whom he represents should be liable for the consequences that follow.

Mr. *Cawley*—continued.

895. Without the workman making any remonstrances whatever?—The workman, if he commenced to make remarks, would have to leave his employment; a workman is not permitted to discuss with the foreman.

896. Is it not a fact that when a workman enters upon an employment, at a certain rate of wages, that there is an agreement on both sides; he is not compelled to enter into it, is he?—He is not compelled to, but circumstances and the necessities of life compel him to seek employment somewhere, and he must obtain it where he can get it.

897. Then is it your opinion that the law ought to deal with workmen as if, either from their want of capacity or from the circumstances in which they are placed, they are not fully capable of exercising any discretion; do you think that the law ought to take care of them as it would of a child?—No. I really do not think that if the Bill passed with as strong a clause as the one which I read, admitting all the circumstances, it would be an exceptional law in favour of the workmen.

898. That does not meet my question at all, which was following on your own proposition that a master ought to provide for the safety of his men, and that the man, from his position, has no right even to draw attention to the circumstance that he is running a risk; but that if he is told to go and work in a particularly dangerous place, his business is to go and do the work; that, as I understand, is your proposition?—That is the position, and that is the fact.

899. And that if anything happens to him in consequence of that, he not exercising any discretion, he is to be protected by the law; do you mean to carry it to that extent; because it seems to me that that is exactly as I put it, that the law has to take care of that man as the law has to take care of a child who is not capable of exercising discretion?—I do not know that I should like to adopt your words in answer to that; but I mean to say that an employer should be held liable for the consequences resulting from his ordering a man to go into a dangerous work, unless the man had made special arrangements, by special agreement, to accept of it; and then, of course, he would have to bear it.

900. Starting with the proposition that when he enters on the employment he assumes that he has got to work on a scaffolding which is a proper scaffolding, but he is asked to go upon a scaffolding which is not in accordance with his assumed position, I understand you then to say that he has no business to remonstrate and say, this is not my contract; I am engaged to work on a proper scaffolding; this scaffolding is not proper; you say he has no right to make that remonstrance?—No, in putting it in that way, it would look very absurd for a workman to go on to a piece of work where he is expected to meet with a serious accident; but reducing it to the practical results of every day life, it is this: that a workman when ordered to go and perform certain duties must go and perform them, and not discuss it with the manager, or if he attempts to discuss it, the consequence is that he loses his employment, and we know that a man cannot afford to do that. Men with families are often driven

Mr. *Cawley*—continued.

driven to accept positions which are not at all times safe and good.

901. In the case which I put, how would you draw a distinction between a man having without any fault of his own, merely stepped over a scaffold, and his having done it through pure negligence, how in coming to settle the case would you draw a distinction?—I apprehend that in cases of that kind, where it could be proven to the jury who tried the case that the man's utterly careless act and neglect in taking the common precautions which a man should take had led to the accident, that the employer would not be liable to compensation for cases of that kind. I think matters of this kind should come before juries, and that to all parties will be a very fair protection. I do not think that either side would, as a rule, have cause to complain of their decision.

902. Even then you cannot tell how you yourself would draw a distinction; a man has fallen off because his foot went over the side, but you cannot tell, as I understand, how you would advise a jury to draw the distinction whether it was the man's own carelessness, or something over which he had no control?—Without a special case before me, I should not like to say what I would recommend for an event which has not taken place.

903. I understand your evidence comes to this; that as regards risks, the employer and the workmen ought not to be allowed to make any free contracts?—I have never said such a word as that they should not be allowed to make free contracts. I never used those words; at least, I did not intend to.

904. At all events, a workman is not to make a free contract to run all risks?—The remark that I made, if I remember aright, in answer to a question of that nature, was, that if employers were permitted by law, or a law was passed to permit them to contract themselves out of being liable for damages, it would lead to very unfair contracts being made by the workmen, and it would only result in this: that the men would be led to make contracts that were not fair and just towards themselves, and therefore, I should say, that in that sense they would not be free contracts. When a man is pressed by the necessities of life, and driven to accept conditions which he would not otherwise have accepted, I do not think that that is altogether free or fair.

905. That is the case with persons, in a very different position from workmen, every day in the year, when they are hard pressed; that they are compelled to make contracts which are not fair, but nevertheless they are held to be binding?——

Mr. *Tennant*.

906. You do not mean to say that you would make an employer responsible for an injury to a workman, when he himself had contributed to his own injury?—I should not like to say that I could answer that in the affirmative, but I really think that it is hardly a fair question to put. I should not like to hold an employer responsible for some suicidal act done by a man that led to the injury of his own person, but if this suicidal act of a stupid man, a man who perhaps ought never to have been employed, through his inefficiency as a workman, and his suicidal act causes great injury to other people in the same employment



Mr. *Tennant*—continued.

I mean to say that the employer, as it appears to me, might fairly be held responsible.

907. Take the case that you have referred to, of a man who chooses to step outside a scaffold and to tumble down; he knew it was only 20 inches wide, or whatever the width was; would you say that he had contributed to his own injury by stepping off the plank; had he any right to suppose that it was 30 inches when in point of fact he knew it was 20?—If a man wantonly steps into the clear on purpose, and falls to the bottom and breaks his leg, or otherwise injured himself, I think that no one would hold the employer responsible for a moment, but if a workman had been put to work upon a 20-inch platform amongst bricks, and other materials, where the platform should have been 30 or 40 inches wide, and through the insufficiency of that width he meets with a serious accident, I say that the employer should be held responsible, although the workman knew it was only 20 inches.

908. You say that nearly all those accidents have happened through the negligence of foremen; for instance, from insufficient scaffolding, or unsoundness of material, and so on, would not it substantially effect the object if the master were made responsible for the acts of the foreman, and let the liability stop there?—Yes, I think it would.

909. Would not it answer the object which you have in view, inasmuch as the majority of the accidents that you have told us of happen through the negligence of foremen, if the master's liability were limited to the acts of the foremen and were not brought down to the acts of the fellow workman?—That would be a great amendment in the present law; but it is not so far as I should like to see it carried.

910. Would not it practically, in 99 cases out of 100, meet the case?—In a large number of cases it would prevent accidents that now occur, if the managers and foremen were made responsible, and the employers were made responsible for their acts.

911. Do you find, as a matter of practice, that where there is this carelessness or recklessness on the part of contractors, they have a difficulty in finding workmen to work for them?—You see the labour market is so full of labour at all times that we never have a scarcity. There might be special trades at special times when there might be a little difficulty in obtaining a sufficient number of men, but, as a rule, there is plenty of labour to be found in every branch of industry, so far as my experience has gone, and no scarcity of it whatever.

912. You think that it would not be sufficient if a man had the option of leaving that dangerous employment, and that it would not meet the case?—No, I think not; because he has that option now of leaving.

Mr. *Macdonald*.

913. If the law of compensation was altered would its tendency be to increase carefulness on the part of the men in the matter of insurance, do you think?—I think it would very much increase their care and forethought.

914. Would it lessen or increase the number of accidents?—It would decidedly lessen the number of accidents very largely. I think there cannot be two opinions about it.



915. In

Mr. *Broadhurst*.

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Mr. *Broadhurst.*

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Mr. *Macdonald*—continued.

915. In your opinion, from what cause do very many accidents proceed?—From negligence and too much hurry and drive in the race to get finished whatever they have in hand, and not due care taken in securing the men against accidents.

916. In your opinion would it increase litigations if the law was altered; would it increase the number of cases taken into court?—I think it would do that.

917. Would not it have another tendency, namely, to create greater carefulness?—Yes.

918. And thereby to prevent accidents?—Yes, that must be the ultimate and very speedy result of the amendment of the law.

919. You have heard it stated here that it is desirable that the employers and workmen should have the power of contracting themselves out of the law with respect to accidents; do you think that that would be a desirable state of things?—No; I think not.

920. Do you think that that would be a very undesirable state of things?—Very undesirable.

921. You have heard it insinuated here that the men would become more reckless; do you think that that is likely?—No, I do not think it is. I think it is a rather absurd proposition to put, because a man simply becomes more protected in his possibility of obtaining compensation in case of injury; I do not think it would lead him to mutilate himself in any way.

922. Have you ever met, in your experience, a fellow-workman who was so reckless that he would deliberately have his leg broken, or his arm broken for a paltry personal compensation from an employer or any other person?—I should say not. I never heard of such a thing.

923. Have you ever heard of such a person?—Never in my life. I really do not think the question should be seriously put; it appears to me very absurd.

924. You heard the question put here?—I did. For instance, a person who insures himself against a railway accident would not voluntarily enter a train that he knew was going to be smashed to pieces, merely in order to obtain compensation. I think it would be a most serious piece of business for the insurance companies if men were likely to do such a thing as that; but it is utterly absurd.

Mr. *Macdonald*—continued.

925. You would not consider the employer responsible or liable to be sued, if one of your own trade, a mason, was to lift his mallet, and strike his hand, and smash his hand to pieces?—Certainly not.

926. Would you think the employer responsible for anything that a workman contributes to with his own hand willingly?—No, not any injuries to his own person caused by his own wilful neglect. I certainly should not think of holding the employer responsible for that. It would be unfair and unjust altogether.

927. So that you would not by any means hold an employer responsible for what a man contributes to by his own negligence?—Certainly not.

Mr. *Cawley.*

928. Supposing that the result of his striking that blow were to send a chisel flying and hit somebody else and seriously damage him, would you hold the employer liable to that man who was seriously injured?—I should hardly say that in a case of that kind the employer could be reasonably expected to be liable; in the pure case, to put it in that very clear way, I do not think I would.

Mr. *Knowles.*

929. Did you ever have the question put to you whether you thought a workman would wilfully break his arm or his leg in order to obtain compensation before it was put to you by the honourable Member for Stafford?—Never put to me. I have heard the question put in argument.

930. I mean put to you ever here before it was put by the honourable Member for Stafford?—I do not think it was put to me here.

## Mr. Frederick W. Evans, called in; and Examined.

Mr. *Evans.*

*Chairman.*

931. What is your employment?—I am General Secretary to the Amalgamated Society of Railway Servants.

932. Had you been employed in any business yourself before that?—I had been employed for eight or nine years upon railways prior to that.

933. In what capacity?—I have been employed in the traffic and in the passenger department of railways.

934. Are you aware of the subject which this Committee is appointed to inquire into?—I am.

935. What opinion do you entertain with regard to the question which is referred to this Committee, as to the proper liability of masters to their servants?—If you will permit me, I will make a brief statement as to the views which I entertain upon the subject; and as nearly as possible I will confine my remarks on the subject, in so far as it affects railway servants. Railway servants are, more than any other class, interested in placing on their employers such liabilities as will ensure every precaution being taken for their safety. They are the most interested because a larger per centage of them are victims of accidents which, to a very great degree, are of a preventible nature. By the returns which the companies supply to the Board of Trade it appears that in 1875 alone no less than 4,383 railway servants were killed or injured by accidents on railways. Of this number the companies assert that only 39 were killed and 514 injured from causes beyond their own control, while 726 were killed, and 3,104 were injured from their own misconduct, or want of caution. These returns are by the companies. But I look upon the companies as interested parties, and therefore not impartial in making such returns. 10,000 railway servants have signed a memorial which has been presented to the Royal Commission on railway accidents, in which they assert that the causes stated in the returns of the companies are in many instances erroneous, and that in the majority of cases the accidents to servants are occasioned, first, by the excessive hours of labour; secondly, by the non-enforcement of certain of the company's rules, ostensibly

*Chairman*—continued.

*Chairman*—continued.

ostensibly made for the protection of the men; thirdly, the non-adoption of the most approved appliances conducive to safety in the working of railways; fourthly, by the want of proper accommodation for working the traffic; fifthly, by the employment of inefficient persons for the performance of responsible duties; and sixthly, by the insufficient number of men employed. Taking the companies own figures in the 1875 return as being accurate, there would be even then 553 servants injured by no fault of their own, and to whom, were they not servants, it is probable that the companies would be compelled by law to pay compensation. But as the law at present (as I understand it) stands, railway servants cannot claim any compensation whatever for the loss they suffer by the acts of others. The companies at present are in no way responsible for the safety of their servants. Every act done for a corporate body is the act of a servant, and whatever the position of that servant to another, any act of his, if injurious to his inferior, the law holds to be the act of a fellow-servant. They are in a common employment. It so happens that as the law now stands, the life of a railway servant is of less value than the life of a horse, inasmuch as, however gross the mismanagement which produces the death of or injury to a servant, there is no responsibility whatever upon the company; whereas if a horse is injured or killed, it costs the company a certain amount of money in order to replace the animal. It is in consequence of this irresponsibility that companies do not go to any great expense in removing sources of danger to their servants. Some little time ago an accident happened on the Great Western Railway at Worcester, by which a goods guard named Penn was killed, and at the inquiry held into the accident, the coroner's jury found that the state of the yard was dangerous, and that there was insufficient light for the work to be done with safety. That happened in the early part of the year 1874, and I believe at the present time the yard is in a similar state, and only recently another man was killed in the same yard. I hold it to be the duty of the Legislature, as the companies cannot act for themselves, but must depute their authority to others, to make the companies responsible for loss sustained by servants through the acts of those who wield authority in the companies' names. An accident occurred at Crewe last November, by which a person, named Hawkins, was killed; the inquiry held by the coroner proved that the driver of the engine was a lad, a cleaner, and quite an inexperienced person, and the accommodation in the place where Hawkins was placed was quite insufficient; but Hawkins's family could claim no compensation, as the law now stands, for the loss which they sustained by two distinct acts of negligence or mismanagement on the part of the London and North Western Railway Company. In shunting operations, about one in every 20 men engaged are killed or injured in the year. This arises, in a great measure, from a practice termed fly-shunting. In the companies' rules this practice is generally forbidden; but while forbidden in the rules it is nearly everywhere practised with the consent of the companies' officers; and with the limited accommodation which the railway companies have for working their goods traffic, I question if the traffic could be carried on without resort to this practice. Where the



*Chairman*—continued.

Mr. *Evans.*

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rules forebade a practice, and it was carried on with the sanction of the companies' officers, I would hold the companies responsible for all accidents to their servants arising from the practice. There are in the railway service a number of officers of various grades, who each to those servants under them represent the employer, and exercise so far as such servants are concerned the authority which an employer has over those employed. Thus, to the ordinary servant on a railway, the manager, superintendent, station-master, inspector, and foreman, represent the interest and the authority of the employer, or the company. In any case where the actions of such persons in authority, or the action of others who carry out their instructions, inflicts injury to a servant, I hold that, as the officer stands in the position of employer, the company should be liable for loss occasioned by his neglect, indiscretion, or want of judgment. It also happens that one class of servants are under the direction of another class, and are bound to obey their instructions. Thus the driver is bound to obey the directions given him by the signalman. Should the driver refuse or neglect to do so, and a fatal accident occurred, he would be deemed guilty of manslaughter; and the companies invariably punish any disobedience by drivers to the directions of signalmen. In this case, also, the signalman represents the authority of the employer, and if by his wrong direction a driver or fireman, or guard were injured, I hold that the company should be liable. It has been asserted that men are paid higher wages in proportion to the risk they run. Nothing could be more inaccurate. In dangerous occupations on railways the risk is greatest when the experience is least, and when the rates of wages are lowest. Thus the risk to a man just started at from 20 *s.* to 22 *s.* per week as a shunter or brakesman is greater than when, by length of service, he has attained to experience and the maximum wage of 25 *s.* or 30 *s.* respectively. Again, the highest wages are not paid to the class of servant who in the performance of duty run the greatest risk. Thus the shunter, whose duties are by far the most dangerous, receives less than the driver, than the goods guard, than the passenger guard, and sometimes than the signalman. The highest wages are given to those classes whose experience is gained by long service and whose duties are responsible. It is the interest of the companies to induce these men, by offers of higher wages, to remain in the service. If they became migratory, the work of the lines would be carried on with greater risk, inconvenience, and loss to the proprietors. I am therefore of opinion, that in the consideration of the liability of railway companies to their servants for injuries, it cannot be maintained that higher wages are paid to cover greater risks. The exemption of the employer from liability for claims to compensation for injuries to one servant caused by the neglect of another servant, known as the common employment doctrine, bears most unjustly on railway servants. Owing to the different natures of their occupations, there is nothing common in the employment of many railway servants, unless it be that the same shareholders are their employers. There is no real community of employment between a guard and a platelayer, an engine-driver and a clerk, a joiner and a fireman, yet in these instances the Law Courts have ruled to the

 contrary.

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*Chairman*—continued.

contrary. And as between officers and servants, their real relations are those of employer and employed. Thousands of servants never see each other, live miles from each other, are in totally distinct departments, and under different officers. Servants have not the choice of their fellows, are ignorant of each other's qualifications, and any attempt to interfere with the appointments of the officials would be viewed by them as an insolence. I may state that a little while ago an appointment was made of a driver of some four months' qualification, to the fastest train running on a certain railway. At a meeting of the men, I was requested to lay before the chairman this fact; but the chairman has neither had the courtesy to notice my letter, nor has there been any alteration whatever in the state of things. The railway companies, generally, refuse to recognise any combination of their servants; and therefore the servant would have really no influence in the appointment of other servants by the companies. Nor can the servants judge of the state of the machinery and appliances, other than that immediately under their own control. Any refusal to obey orders may result in an immediate arrest by any officer under the Railway Act of 1842, which provides special protection to the companies against any neglect or wilful disobedience of their servants. These are, to my mind, reasons why the companies should be legally responsible to one servant for the injury done him by another. The whole question presents itself to me in this form: Loss and injury are inflicted on a workman by the carelessness or negligence of a person who has been selected specially by an employer, who acts under the employer's instructions, and who is free from the exercise of any control by the injured workman. The employer is liable for any damage which such a person might, through incompetence or negligence, do to any person not in the employ, or to any property entrusted to the employer, and I am unable to see why the liability should be removed when the damage is done to an employé through no fault of his own. The servant cannot be expected to undertake a portion of the employer's risk when he is debarred from sharing in the profits. The servant is a contractor with the company, as is a railway passenger or freighter, and if he faithfully performs his contract, the law should protect him from loss inflicted by other and injudicious or unfortunate contracts which his employer may make with others for the employer's profit or convenience. There can be little doubt that if such was the case, railway companies would more carefully select their servants, and place them under more careful and efficient supervision, and suppress those dangerous methods of doing work now everywhere practised, and which lead to the fearful slaughter of railway servants. It has been urged that if a measure providing compensation for injuries to workmen became law, they would be more careless, and incur unnecessary risk. I am not of this opinion. There are several cogent reasons against such a view, first, for them to do so would in itself invalidate any claim they might make to compensation from their employer; secondly, if the safety of others was concerned, their conduct would lead, in the railway service, to dismissal from the service and possibly to imprisonment; thirdly, it is against human nature to voluntarily incur pain

*Chairman*—continued.

and deformity, and sacrifice family and all natural enjoyments, especially as in this case when the expected recompense is an uncertainty; fourthly, such an argument would be equally effective if urged against compensation for injuries to passengers, and if it has any weight, railway accidents to the public would be more frequent than they are. My experience is, and I travel much, that although sympathising juries often give excessive damages to injured passengers, the passengers dread, and never court, accidents on that account. With reference to the assessment of the amount of damages to be paid as compensation for injuries, I view the present system of leaving it to juries as most unequal, and often unjust to the defendants in such suits. As an instance of this inequality, the society, of which I am an officer, some three years ago, brought an action against the London and North Western Railway Company on behalf of the widow of a guard of the North London Railway, who had been killed, and the jury awarded 350*l.* compensation. That was 100*l.* for the widow, and 50*l.* for each child. Last week, at Westminster, the North Eastern Railway Company were sued, on behalf of the widow of a Great Northern servant, who had been killed at Leeds; and in that case, although the man's wages were less than that of the guard who had been killed, the jury assessed the damages at 200*l.* for the widow, and 100*l.* for each child, giving exactly double in this latter case what the jury gave in the former. Juries have not, as a general rule, any qualification as assessors, and are even, on this account, unfitted to be the judges of the amount of damage; but when to this is added the weight which feeling has in the scale of their judgments, either one way or the other, their verdict becomes a matter of caprice. The mode of assessment should be such as would enable the employer to insure against his liability, and the law proceedings be the simplest and least expensive. To effect this, I would suggest that such cases should be determined in the county courts; and that in the event of damages being awarded, the amount should be determined by two assessors, one chosen by either side, with the judge acting as umpire; or else that a fixed scale should be determined on by actuaries, of the value of life at varying ages, and of varying worth.

Mr. *Tennant.*

936. What are your reasons for saying that you think those returns that are made by railway companies are not reliable?—I have found in many cases that the causes to which accidents are attributed by the companies are not such as would be returned by juries or impartial judges, or by others who are themselves engaged in the railway service. I will give an instance. A man is injured at the Bristol yard; he is working at night on what is called the Harbour Railway; he gets off his train, and in the dark he stumbles across a pile of ballast which is left improperly in the six-foot way, and is run over. Granted that it was want of caution on his part not to see that the ballast was there, he did not expect that it would be there, and it was either the duty of the company not to have that ballast there or to have warned those who used that particular section of the road that the ballast was there, and that there was more than ordinary danger. Rules ostensibly for the safety of servants are considered by the companies binding when

Mr. *Tennant*—continued.

when judging of the action of a man who had brought an accident upon himself; whilst in practice those rules are not adhered to or enforced by the companies themselves.

*Chairman.*

937. How did the company return this accident?—It would be as an accident from want of caution on the part of the servant.

Mr. *Tennant.*

938. Then there could be no exception taken to it on that ground, because no doubt it was a want of caution?—I take exception to the return as the company classified it, as the man's own misconduct or want of caution, and they attributed the accident solely to that.

939. May it be said that a very great proportion of these accidents are attributable to the negligence of the men themselves?—A very large number are occasioned by the servants incurring unnecessary risks.

940. Would you in such a case as that make the company responsible?—Not in such cases.

941. You would exclude all those cases?—Yes, all those cases entirely.

942. May we infer from what you have said that you think the companies should only be made responsible for the acts of those over whom they have control or superintendence?—Wherever any servant, whether he be an officer or an ordinary servant, is under the direction of the company, and in that direction he inflicts loss upon another servant, I would hold the company responsible.

943. This assumes that the man who causes the accident was ordered by a foreman, or some one having direct orders, to do a particular work; but supposing the accident was caused by some act of his, which was contrary to the express orders of the company, and in direct violation of them, what would you say?—I think that the company should be responsible, provided it could be proved that they are lax in supervision or in the choice of those particular persons whom they place in authority over the others.

944. Assuming that the company have exercised a due discretion in the selection of competent people, and assuming that they have rules, which rules they expect to be carried out, but that still those rules are broken by this competent person, or by this person who is supposed to be a competent person, and that an accident ensues, would you then say that the company should be responsible?—If you will allow me to re-state what I stated, I said that I looked upon the question in this way: that a servant could not be expected to undertake a portion of the employer's risks where he is debarred from sharing in the profits. The servant is a contractor; he makes the contract solely by himself with the company, and if he faithfully performs his contract, the law should protect him from loss inflicted by other injudicious or unfortunate contracts which his employers might make for the employers own gain.

945. Would you put in the word "wilful" as well?—"Wilful" might go in as well.

946. You would include a wilful act as well as an unfortunate or an injudicious act?—Perhaps the honourable Member will explain in what manner he means the word "wilful" to be understood.

Mr. *Tennant*—continued.

947. Supposing a railway company laid down a rule, for instance, that when rails are to be taken up, certain precautions are to be taken, and that those in charge, that is to say, the platelayers, are to do certain things, and they do something in direct violation, for instance, do not send a man forward with his flag to stop a train, or anything of that sort, and supposing that through such neglect on the part of the man who did not perform the orders, an accident occurred to one of those workmen, would you then say that the company was responsible?—I hold that the risk of that servant's action would be the employer's, and not his fellow-servant's.

948. Although it was in direct contravention of the orders of the company?—Yes. I hold that the company should have such supervision over their servants as to make it almost impossible that such an event should happen.

949. Will you tell us in practice how the company could possibly supervise the man who ought to have gone forward with the red flag and did not?—By having a foreman over the gang. The platelayers generally work in gangs, and, as a rule, there is a foreman over the gang; he is practically the platelayer; the others are generally termed packers. It is the foreman who would represent the authority on that occasion. In addition to that there is also an inspector over the various gangs, and I would hold the company responsible for the negligence of the inspector or the foreman in not seeing measures of precaution were taken.

950. Do you think that the foreman or the inspector should do what this particular man with the red flag did not do, that is hold it up?—No, but he could see that he shows it.

951. Supposing he leaves him for the purpose of going to hold up a red flag, but does not hold it up?—I would hardly like to give an answer upon that point.

952. In this particular case of Hawkins that you referred to, was that case tried?—No; but the coroner's jury who sat upon the body of the man very severely censured the company.

953. How do you know that in such a case as that the company would not have been liable?—We have other precedent cases which govern such as these, and we never attempt to enter into litigation on them, knowing the present state of law excludes any chance of success.

954. Have you any case where a company knowingly employs an ignorant boy to drive an engine instead of an engine-driver?—That would be the act of the company's servant who appointed that boy; the locomotive foreman, in that locality, would be the person who had done the wrong act in appointing the boy, and would be in a common employment with the injured man.

955. You would hold that the company was not liable?—The company would not be liable for the act of that man with the existing state of the law.

956. You say that you do not consider that there is any community of employment between an engine-driver and a platelayer; do you consider that there would be a community of employment between the engine-driver and the guard?—No, there would not be.

957. Do you think that the guard should be able to recover in the case of the negligence of the driver, and *vice versâ*?—Yes; the driver is under

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under a totally different control from the guard. He is in a different department, and under a different management, and, with the exception of the signals on the road, he is under different instructions.

958. Who would be in community of employment with the engine-driver?—The fireman.

959. Simply the fireman?—Yes.

960. Would you consider two guards in charge of the same train in a community of employment?—Yes, I would.

961. But one might be at one end of the train, and the other at the other?—Yes; what I mean by community of employment, is the same employment; that the nature of their work is the same, and they are immediately under the same instructions.

962. Supposing the signal is to put on the break, do you think that the company ought to be any more responsible because the engine-driver failed to do it, or the guard failed to do it, than if there were two guards, one of whom fails to do it, and the other does not?—I hardly see the bearing of the honourable Member's question.

963. Assuming that there is an order that all the breaks are to be put on, and supposing that there are three different vans in the train and one engine-driver, and supposing that an accident happened through two of the guards not having put on their breaks simultaneously with the guard who gave the signal, do you think that in that case the company ought to be responsible?—I do not say so.

964. You say that those three guards are in a community of employment?—I have not said yet that the company ought not to be responsible where there is a community of employment; I have merely stated that there is no real community of employment between the men in the various businesses who never see each other, it may be, but once in their lifetime, and who never come in contact with each other.

Mr. *Shaw Lefevre.*

965. I did not quite understand you to admit that community of employment should relieve the employer?—No.

966. I rather took you as assuming that, if there was such a doctrine of common employment, it would not extend to that particular case?—That is so.

Mr. *Tennant.*

967. I understood you to define what people were not in a position of community of employment?—I referred to that because the present law in three instances has held that men who never came in contact with each other were in community of employment.

968. Would you say that it should make any difference whatever to the action, if there was a community of employment?—No.

969. Then the doctrine you think should be done away with altogether?—Yes; the honourable Member has placed two distinct questions before me; he has asked whether I think there is any community of employment between the driver and the guard, and the other question was whether I think the community of employment should make any difference; they are two distinct questions.

970. You adhere to the answer that you gave to the last question?—Yes.

Mr. *Tennant*—continued.

971. You referred to the tribunal not being a very satisfactory one for the assessment of damages; would you have any limit of liability?—I would have a limit of liability to enable the employers to ensure against risk.

972. Have you any idea what the amount of liability should be?—I am not qualified to give an opinion as to what amount should be assessed.

973. Do you think that it should be assessed on the principle of the wages that they are earning?—Yes, the value of the life at varying ages, and of varying worth or earning capacity.

974. But you have not thought how many years' purchase would be paid?—No; I have not given that sufficient consideration.

975. Would you allow, assuming the law were to be altered in the direction you wish, any special contract to be made between the railway servant and the company?—If you mean whether I would allow the company and the servant to contract this law away, if possible I would not allow it; I would prevent it.

Sir *Daniel Gooch.*

976. You state that the return of those accidents was inaccurate as made by the companies; are you aware that the Board of Trade send down an inspector in respect of every accident, who makes a special report himself?—I am not aware that they send down an inspector to inspect every accident. I think that the number of accidents inquired into in 1874 by the Board of Trade inspectors were under 200, whereas the whole number of accidents to individual servants alone amounted to nearly 4,000 in that year.

977. The Board of Trade have the power to inquire into all accidents, have they not, in which they have the slightest doubt as to the cause and the means of prevention, if they are not satisfied, in fact?—If you will allow me to say so, I think that there are special instructions issued which state the particular classes of accidents which it is necessary should be reported to the Board of Trade with a view to inquiries being made.

978. The railway companies have to report every accident to the Board of Trade, and the Board of Trade have the power, and they exercise this power of investigating accidents in the way that they think is best for the interest of the public?—Yes; but your first question assumes that they are to investigate every accident which has occurred.

979. Every accident in which they have the slightest ground to think that it is not accurately returned by the officials themselves?—Yes, they have that power.

980. Have the railway companies no other reason for care and anxiety about the safety of the traffic and of their servants than the mere compensation that they would have to pay to their servants; do you think that the damage of railway stock and the damage of plant to a company is not a much more serious matter than even compensation to railway servants?—The majority of accidents to the railway servants are those which do not at the same time inflict damage to the stock and property of the company.

981. You instanced fly-shunting; is there not much more damage done to railway stock by fly-shunting than to the servants; and besides, is not the rule made much more for the safety of the stock than for the safety of the servants?—Ostensibly the rule is more for the safety of the servant,

Sir *Daniel Gooch*—continued.

vant, but the stock is more shaken by the operation of fly-shunting than the other description of shunting.

982. There is no great risk, is there, to the servant if he is careful in fly-shunting?—I think there is much greater risk.

983. Will you describe what fly-shunting is?—There is risk wherever a person has to get on or off a waggon that is moving about.

984. Fly-shunting does not mean that a man gets off, does it?—No, but it means that he performs the operation in a dangerous position on a moving vehicle, on a double shunt.

985. You have no experience yourself of the work, I believe?—No.

986. You were a clerk in the office and had no out-door experience?—No, no out-door experience.

987. Is not fly-shunting this; that instead of backing the train into a siding or into the place where it is to go, and leaving two or three end waggons, they give it a push and the waggons being uncoupled will generally run of themselves?—Then the other portion of the train goes on.

988. No, one portion of the train stops, and those end waggons run by themselves; is not that fly-shunting?—Fly-shunting to which I allude is making a double shunt; that is shunting into different roads without stopping. As an instance of what I state, at Carlisle on the 16th of last month I saw no less than five shunts made without the engine stopping; and some of those waggons were propelled along those roads at a rate of from 10 to 20 miles an hour.

989. Were the men running with them?—The men were moving about the yard at the time, and some were obliged to move on and about the waggons in motion.

990. But have you had experience yourself of the conduct of railway operations?—No practical out-door experience.

991. Are not they, the enginemen, the highest paid men on the railway that are working for daily wages?—The enginemen are paid the highest.

992. Is not theirs the most responsible and dangerous position in the train?—The most responsible and dangerous in the train.

993. They are in the front, and in fact they have to meet every danger?—Yes.

994. Does not that show that they are paid higher wages, and is there any other reason for their being paid higher wages than the extreme danger of their duty, because really there is no art in putting steam off and on?—No, my own opinion is that the companies are anxious that their drivers should have long experience, and are so long in placing them at the higher wages that a man not only becomes experienced, but proves that he is a tested servant before he is made an engine-driver. A fireman runs the same risk as the driver, and gets only half the driver's wages.

995. How long does it take for a man to get the position of an engine-driver?—It depends upon the railway.

996. Take any of them; take the Great Western, from the time he is put on the engine at all?—He may be a driver in three years.

997. Still that is not very often the case?—No.

998. How long would it be before he gets to the highest scale of wages, supposing he conducted himself properly?—On the Great Western I believe it would take him five or six years, on some railways it takes him three years, from the time he is appointed to be an engineman.

999. Are there not hundreds of guards and porters in the service with four times the length of that service?—Yes.

1000. Do they get up to the same scale of wages?—No, nor are their duties so responsible.

1001. Nor so dangerous?—Responsible, I said.

1002. Are they as dangerous?—Shunting is far more dangerous.

1003. I am speaking of porters and other servants employed in the daily traffic of a railway; are their duties as dangerous as those of enginemen?—No, porters' duties are not; other classes are as dangerously employed.

1004. Is there any class as dangerous as enginemen?—Yes, shunting is far more dangerous; a goods guard's position is more dangerous than that of an engineman; a platelayer has a more dangerous duty than an engineman; and a platelayer only gets an average wage of 17 *s.* or 18 *s.* a-week.

1005. A platelayer's danger arises principally from not looking out?—Wherever men have to work, and their attention has to be devoted to their work, and they are placed where moving vehicles are that may injure them, their work must be dangerous.

1006. Is there not a man employed to call out when a train is approaching?—Sometimes there are boys employed to call out.

1007. Are you aware that the companies themselves do now give a tolerably large sum annually to their servants to assist their sick funds and accident funds?—The Great Western Company give 500 *l.* a year to the Enginemen and Firemen's Society, which contains probably from 2,000 to 3,000 men.

1008. Where do you get that number from?—I estimate it by the number of engines.

1009. You complained that you had written a letter to somebody who had not answered it; is it usual for railway companies when there is any grievance or any complaint to make to get the complaint made by somebody outside the company's business?—It is usual for many companies to do so.

1010. You did not expect an answer to your letter, did you, from any company who really thought of the good of the men?—I certainly should have thought that when an evil had been pointed out to the chairman of a railway company he would have had courtesy sufficient to have acknowledged the communication, even though he did not act upon it.

1011. Supposing that the enginemen themselves thought it an evil, was not it quite competent for the engineman to communicate with their principal officer?—Yes, with the knowledge that for so doing, they would sooner or later meet with the ill-will of the person who was directly responsible for appointing that person who was complained of.

1012. As to this particular case, would not there be exactly the same effect upon the particular engineman whether that complaint was made through the secretary of the society or through the enginemen making the complaint themselves?—I do not understand your question.

1013. Would it make any difference so far as the

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Sir *Daniel Gooch*—continued.

the engineman was concerned, whether the complaint was made by their going to the secretary of the society, or making the complaint directly themselves to the directors?—I think it would make a difference to a body of men, inasmuch as where a body of men meet, and they choose a neutral person to represent their grievance, no particular person can hereafter be punished for taking a prominent part; but where an individual makes himself conspicuous by making a complaint it often happens that hereafter some ill-will is meted out to him.

1014. Take the Great Western Company, has it not been common for the men to make complaints and to meet the directors, and meet the principal officers without interference by outside parties?—I have known that bodies of men have met the directors, but I have also known other occasions where individuals have attempted to represent their grievances to the higher officers and displeased intermediate officers by doing so.

1015. Were they ever refused a hearing?—I may say that I believe the higher officials on the Great Western are most anxious to do what is right to their servants, but there are others between them and the men who will punish the men for presuming to pass over their authority to the higher officers.

1016. Is it not a rule in all railways that every man has access to the board of directors to make a complaint?—No, it is not the rule on all railways; on many railways it is.

1017. You spoke of the man who got injured at Bristol by jumping off amongst the ballast; is it not notorious that at that time the station at Bristol was being rebuilt, and that you could not make the ballast in a case like that smooth and even throughout?—It is notorious that at that time, and for 15 months, the state of the Bristol yard was unnecessarily dangerous to every person working in it.

1018. It was in a transition state, was it not?—Baulks of timber were lying about, and the ballast was heaped up in the six-foot way for months before there was any need for it, so as to endanger every man's safety working in the yard. I nearly lost my own life there.

Mr. *Knowles.*

1019. You know, do you not, that most railway companies have insurance societies connected with their works?—I know that some have, but not most of them.

1020. To which the companies contribute in order to encourage the men to insure?—They contribute but a trifle when you consider the number of men employed and the number of accidents.

1021. Do you see any real objection why the men should not contribute to insure themselves in those societies?—I see no reason why railway servants should not exercise the same discretion in insuring against accidents as any person amongst the rest of the community may do; but because they do that, I see no reason why the master's liability should be removed from them.

1022. Do you think that the men would have the same inducements to insure themselves, provided they knew that in case of an unfortunate accident occurring, they would get compensation from their employers?—I think that the frugal men who desire to insure would still insure,

Mr. *Knowles*—continued.

because there would be a large number of accidents occurring for which the company really would not be liable.

1023. Do you suppose that the companies would continue in that case to pay anything towards this insurance?—It would be no very great loss to the men if they did not. It is a large amount in the aggregate, but when each man's portion is put out, it is a very small amount indeed they contribute to each.

1024. Do you think that most of the men in railway employment would concur in your ideas with reference to that?—My general ideas which I have here expressed the majority of the men would concur in. With reference to insurance societies, there are some men who have a very strong attachment to them under present circumstances, and I think every frugal man would continue to have an attachment to these very good societies which the companies compel them to join if they remain in their service.

1025. You think that to make the companies responsible in the cases which you have pointed out would not interfere with that good understanding which exists between the employers and the employed generally?—I think not. I think that if this became law, the companies would readily admit their liability; and when they were liable, without going to law, they would pay compensation, the amount of which would probably be regulated by a scale.

Mr. *Shaw Lefevre.*

1026. Can you tell us what, in your opinion, is the proportion of accidents which occur, owing to the negligence of the men themselves?—The companies' returns show that the proportion is out of 4,383, 726 killed and 3,104 injured.

1027. What do you say is the probable proportion?—In my own opinion, if the proper causes were returned, in about one-half of those cases it would be found that the want of accommodation, and the other causes mentioned in the memorial, would have contributed to the accidents.

1028. Even in your view of the case there would be one-half of the cases in which the railway servants could not make the companies responsible?—Yes; speaking generally, that would be so.

1029. Therefore there would be the more necessity for them to insure their lives, or to take other measures to meet those particular cases?—Yes.

1030. Have your society watched the interests of railway servants in this respect for some years?—From its establishment in 1872.

1031. Have there been any cases within the knowledge of your society in which railway servants have been able to make the railway companies responsible?—There are four cases that I recollect at present, but they have been cases where common employment has been got rid of, and practically they have been the servants of one company killed through the action of the servants of another company.

1032. But not where they have been able to make the company by whom they were employed themselves responsible?—No; not in one case.

1033. So that practically railway companies are no more responsible in that case for their servants, no matter how great the negligence of the foreman or of the other servants, or however bad the

Mr. *Shaw Lefevre*—continued.

the condition of the line may have been?—They have a complete immunity from responsibility.

1034. It has been suggested before this Committee that in altering the law we should still leave the employers and the workmen or the servants to contract themselves out of it; will you state to the Committee what your opinion upon that point would be?—My opinion is that if that were allowed, the whole of the railway companies of the country would insert in their rule books a clause contracting them out of all responsibility in respect of injury to their servants, and as the men have to swallow the rules when they join the service, the men would, by signing for those rules, throw away the advantages which the proposed alteration of the law would confer upon them.

1035. So that practically such a Bill would have no effect?—No; it would become a dead letter so far as railway servants were concerned.

1036. You think that the railway companies have such command over their men, that they could enforce this new contract upon them?—Yes; I have already said that the rules are now so constructed that it is impossible for the men to do right if the company are anxious to find fault with them.

Mr. *Macdonald.*

1037. You have said, I think, that the fireman and the engineman were in common employment?—The one is the master, if I may use the expression, of the other.

1038. The engine-driver is the master of the fireman, is he not?—He is the foreman; he has the control over the acts of the fireman.

1039. The fireman is totally under his control, as much as the guard is under the control of the signalman?—Yes. The driver and the guard are under the control of the signalman.

1040. Which of the classes of railway servants are the most injured and the most killed, the enginemen or drivers, the firemen, the shunters, or the porters, or the station-masters?—I have already stated that proportionately there are more shunters killed than any other class of railway servants.

1041. And what relation does the shunter's wage bear to that of the engineer or driver; is it larger or smaller?—The shunters' wages range from about 20*s.* to, in some cases, I think, 27*s.*, or about one-half of the wages paid to the drivers.

1042. Amongst railway servants is the most dangerous employment best paid?—No.

1043. Is it the worst paid?—The most dangerous employment is not the best paid, as I have stated already.

Sir *Daniel Gooch.*

1044. A shunter is a porter, is he not?—He is really classed as a porter.

1045. Therefore, as compared with the porter's wages, he is paid considerably in excess of the porter, and it is a promotion from a porter to be a shunter?—A shunter is a shunter, but he is classed with the porters. It is a promotion.

Mr. *Tennant.*

1046. From your answer to the honourable Member's question, may we conclude that you do not think that there is a community of employment even between the engine-driver and the



Mr. *Tennant*—continued.

stoker?—I may say that the stoker is, whilst on the engine, entirely under the control of the driver, and whatever the driver tells him to do he must do. The driver really carries the authority of the employer in his relation to the stoker.

1047. If there was such a thing as community of employment conferring immunity, that would not exist between the driver and the stoker?—No.

1048. Supposing that the immunity of the employer was to be continued to some extent, and that an accident happened to the driver through the carelessness of the stoker, where would the liability be then?—The liability would be with the employer, inasmuch as the driver is not consulted as to the stoker whom he shall take with him.

1049. But the stoker is under the immediate and direct control of the driver, is he not?—So he is under his control, but if you put your question more clearly, I will answer it more clearly. If in doing an act which the driver told him to do, the fireman injured the driver, I should hold that the company were free from liability, but if the fireman undertook to do something without the driver's authority or command, which injured the driver, then I should hold the company responsible.

1050. Take the case of the engine-driver ordering the stoker to put coals on to the fire, and that in doing this he knocks the engine-driver off the engine, who would be responsible in that case?—That would be rather a difficult matter to do. If the driver was in his proper place, it would be impossible to do it.

1051. The driver might step on one side, whilst the coals were being shovelled into the fire?—In stepping on one side to a position where he would be liable to be knocked off the engine, he would be neglecting his duty.

1052. Where ought he to be?—On one side; he is always on one side.

1053. Supposing he were there, and that by any chance the fireman knocked him off the engine, what then?—The particulars of the chance would have to be explained before I could venture to answer such a question.

Mr. *Knowles.*

1054. Provided an engine is stationary, and the engineman leaves it, as he frequently does, to get down and examine the gear, then if the fireman puts the engine in motion without the order of the engineman, or against his express orders, and injures or kills the engineman by that, would you then hold the company responsible?—I should think the company should be responsible, for the principle is this: that the loss has been inflicted upon the driver through the negligence of the person for whom the company is responsible; the question is, who is to compensate the driver for that loss.

1055. You have told us that the driver is virtually his master, and that he is under the orders of the driver, and working along with him; would you make the company responsible in case he set the engine in motion contrary to the orders of the driver?—If you will recollect, I qualified that answer by a distinction between an action under the command of the driver, and an action upon the responsibility of the fireman himself. If the action which injured the driver

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Mr. *Knowles*—continued.

was taken on the responsibility of the fireman himself, as the driver has no voice in the selection of his fireman, or in the employment of him, I would hold the person who employed the fireman, who selected him, to be responsible for the consequences of his act.

Mr. *Shaw Lefevre.*

1056. You said that there were four cases in which railway servants had been able to recover against railway companies, but they were cases in which the doctrine of common employment could not apply; I will assume a case: supposing a company had running powers over the line of another company, and the engine-driver is killed through the negligence of the platelayer of the other company, I presume in that case the engine-driver could recover against the other company?—I am not sure of that. There are many companies who insert certain rules into their rule-books with regard to working over other companies' lines.

1057. Could you give us the particulars of those four cases in which the doctrine of common employment did not apply?—In the first place an accident happened to a guard on one of the London railways, who was employed by the North London Railway Company; while performing his duty, through the London and North Western driver's improper action, the train to which he was attached was shunted back, and he was killed. The company had neglected to place either proper persons or proper signals at this place to guard their own men.

1058. That was an ordinary case; I mentioned another company having running powers over the line where the person was employed; in that case he was able to recover, was he not?—Yes. In another case decided the week before last, the person injured was employed at Leeds as signalman in a yard which is used by both companies, the North Eastern and the Great Northern. He was employed by the Great Northern Company, but he had to do some work in connection with the North Eastern, and was killed owing to the negligence of a North Eastern Railway servant. The North Eastern Company contended that he was a joint servant, but as he had been employed by the Great Northern, and was paid by the Great Northern, and could only be dismissed by the Great Northern, it was held that, although he did some work where he was in the interchange of traffic, he was not a joint servant, but the servant of the Great Northern Company.

1059. What was the negligence in that case?—That the driver of the North Eastern brought the break van in front of him contrary to instructions; the fireman had left the engine to obtain stores, and the driver was driving at too great a speed in a dangerous place.

1060. Had this engine-driver been a servant of the same company as the guard, he could not have recovered?—No; he could not.

Mr. *Cawley.*

1061. As to the rate of wages, do you suppose that what is known as the law of supply and demand has anything to do with the rate of wages, that is to say, the demand for a particular class of men, and the number of men that are ready to take the position?—I would rather not express an opinion upon a matter which I am not very conversant with.

Mr. *Cawley*—continued.

1062. What in your opinion does fix the rate of wages?—I believe that the law of supply and demand does affect to some extent the rate of wages, but not so much on railways as in other trades.

1063. Why?—The companies fix the minimum price at which a man can live to start with, and it is very difficult for a body of men, in the railway service at any rate, to force the companies to a level with the labour market.

1064. If there were not an abundant supply of men to fill the places at those rates, could the companies do it?—I must enter into a very long reply, which I hardly think is relevant to the question we are discussing. The railway companies can act differently from other employers, inasmuch as there are a large number of persons in their employ whom, if they left, they could, by refusing to give them characters, prevent obtaining employment in similar situations.

1065. I suppose that applies to every employer of labour throughout the country?—It does not apply to any other work as it does to railway work. There is an agreement existing, which if not in writing, is admitted amongst railway companies, that they will not take a late servant who leaves another railway company, unless he can show a satisfactory reason for leaving his employment.

1066. Do you think that exists to such an extent as to interfere with the law of supply and demand?—It interferes to this extent, that the men are afraid of risking the loss of their situations as they have no freedom in moving from place to place as in other employments.

1067. Taking the last five years, are the number of workmen employed on railways increasing or decreasing?—The number will have increased.

1068. Then they do not have to fall back upon the men already in their employment?—They have had to draw from the labour market.

1069. Therefore there has been a supply?—Yes, but railway companies have means of drawing from the labour market which other employers have not so readily. At one time they invariably went to the agricultural districts to obtain their men where the wages are at the lowest. An inducement was held out to those men to enter into the railway service, and the cost of conveyance would be little or nothing to the companies.

1070. That is still supply and demand, is it not?—Yes.

1071. Now, then, coming back to the different classes of men, is it not also the fact that men who are required to have greater skill and greater intelligence where the labour is known as skilled labour, apart from other circumstances, command a higher rate of wages than the normal wages?—I presume the honourable Member is speaking of railways now?

1072. I will put the question generally?—I believe that skilled labour usually reaches a higher price than unskilled labour.

1073. In addition to the skill, where great firmness, discretion, and judgment are required, does not that also enter into the qualification?—It enters into the qualification, but it does not follow that that qualification is always recognised.

1074. I am

Mr. *Cawley*—continued.

1074. I am putting the case where they are necessary, and, therefore, are recognised, and where they are required by the employer, where, in addition to mere skill in the performance of a mechanical operation, judgment, firmness in time of danger, and discretion are required in carrying out the employment; does not that also form an element at all events in the extent of the supply, and, as a rule, lead to higher wages?—Yes.

1075. Taking that into consideration, is not the supply from which the railway companies can draw their enginemen very limited as compared with that from which they can draw their porters?—No; the source from which they draw is the same.

1076. You think that if they put on an extra 100 engines to-day there are another 100 enginemen in the market ready?—They have means of supplying the other 100 engines with those who will take charge of them.

1077. Are there enginemen in the market?—There are firemen who are ready to be enginemen; who have been long enough firing to enable them to be enginemen.

1078. Which they have been learning to do?—Yes.

1079. If a railway company wanted porters are there not thousands from whom they can draw them?—Yes.

1080. Generally?—Yes, generally.

1081. Supposing that one branch of this employment is more dangerous than another branch, does not the same rule apply to any dangerous employment; and is not the law of supply and demand an element in that case, because it affects the number of persons who are willing to accept of that dangerous employment?—Your question mystifies me.

1082. Take the case of shunters, who are taken from the porters; there is undoubtedly more danger in it, and is every porter willing to accept that office?—I cannot tell you.

Mr. *Cawley*—continued.

1083. That is the reason the company should give higher wages to a shunter than to a common porter?—It is harder work and more responsible work.

1084. And more dangerous?—Yes, more dangerous certainly.

1085. Could they get it done at the same price as common porter's work?—I cannot say what they could get done.

1086. Do you think every porter is willing to be a shunter?—I cannot say.

Mr. *Knowles.*

1087. That is assuming that they give them shunter's wages for it?—There are many men who are well qualified physically for shunting work, but who would not accept it for a single moment. There are other inducements to remain porters which have to be taken into consideration. There are gratuities given by the public which make the porter's wages higher than the shunter's. For that reason, in passenger stations, there are thousands who, in nominal wages, are paid less than shunters, but who would refuse to accept the position of shunters.

1088. It is fair to put it in that form, that because an engineman receives higher wages than the shunters, and that a larger proportion of shunters are killed, that therefore the shunter is not paid for the increased danger?—I may say generally that the question of danger is not at all considered in the rate of wages paid to the men in the railway service, because a platelayer is paid less wages than the porter, and his duty is far more dangerous, and his work harder.

1089. You mean that it is not discussed?—Facts prove that it is not so. The fact that I adduce is this: that where the risk is greatest, and where the experience is least, wages are lowest.

Mr. *Evans.*

18 July 1876.

*Friday, 21st July 1876.*

MEMBERS PRESENT:

Mr. Cawley.
Sir Daniel Gooch.
Mr. Knowles.
Mr. Lowe.
Mr. Macdonald.
Mr. Eustace Smith.
Mr. W. Stanhope.
Mr. Tennant.
Mr. Wyndham.

THE RIGHT HONOURABLE ROBERT LOWE, IN THE CHAIR.

Mr. BENJAMIN HANNEN, called in; and Examined.

Mr. *Hannen.*
21 July 1876.

*Chairman.*

1090. WHAT is your occupation?—A master builder.

1091. Do you take contracts for buildings?—Yes.

1092. Do you appear here on behalf of any association?—I was asked on behalf of the Builders' Society, to which I belong, to come here to-day, and give evidence.

1093. What is the Builders' Society?—It is a society of the principal builders in London, who meet together to discuss any question that arises in the trade.

1094. That is to say, with regard to your business matters, or matters of the politics of the trade?—On what probably you would call the politics of the trade, and the general interests of the trade.

1095. Are you aware of the question which is referred to this Committee?—Yes, I have seen the Bill which was introduced by the honourable Member for Stafford.

1096. There are two questions in fact referred to this Committee; one as to common employment, and the other as to the possibility of making the master liable for the acts of sub-agents; will you give us your opinion upon those two subjects?—I should mention that I only heard this morning that I was to give evidence; therefore I shall probably have to depend more upon the questions that any honourable Member of the Committee may desire to put, than upon any general statement that I could make, but I will just briefly state my opinion with regard to the question; I assume that what should be the basis of the law, or what is the basis of the law, is that whoever, by his own act, causes any injury to another he is the person that should be responsible for that injury. As I understand the law at present it is practically that if any 12 impartial persons can be brought to say that I contributed in any way towards an accident as an employer, I should now be liable, and that therefore what is sought now to do is to make me liable for that which no 12 impartial persons will say that I had anything to do with. It seems to me that in every case where it is intended to create any vicarious responsibility it should be necessary that very strong cause should be shown

*Chairman*—continued.

before a deviation from the principle which I have pointed out is made. Generally that is my view with regard to the question, and holding that view of course I cannot see why I, as an employer of labour, should be made in any way responsible for that which it is admitted when the demand is made, I have in no way have contributed to bring about.

1097. Are you aware what your responsibilities are to strangers, persons not employed by you?—Yes.

1098. What do you say to that law?—I say that holding the view that I do, the argument from analogy does not impress my mind, because, personally speaking, I think that this doctrine of vicarious responsibility has been already pushed too far.

1099. But the questions which we have to consider is how we are to justify the two different rules that are applied, the one in the case of servants and the other in the case of strangers; because what you condemn actually is the law with regard to strangers?—I assume that in cases where the law has already deviated from the principle which I pointed out, they have had some strong reasons for doing so, and those strong reasons I fail to see in the extension which is now required.

1100. I suppose you have not given much attention to the history of the law, as to how it arose?—Naturally I have not had any opportunity of studying it much.

1101. Do you consider that the present law with regard to strangers is right; that is to say, that you are liable for negligence that you really have nothing to do with, except that it was committed by your servant?—Of course I am not here prepared to require any alteration in the law; I only say that, as a matter of argument, I fail to see even in that case why I should be held responsible, not having in any way contributed to the injury. But assuming that there are grounds of public policy for it, I am not prepared to raise any question with regard to it.

1102. How do you distinguish the case of a servant from the case of a stranger, assuming that the law is right with regard to strangers; why should there be a different law with regard to

*Chairman*—continued.

to servants?—I do not assume that the law is right; I say that I cannot see that the law is right in that respect.

1103. I quite understand that you do not wish to be considered as approving of the law with regard to strangers?—No, I do not.

1104. But still it is the law, and is it not necessary therefore for you if you acquiesce in that being the law, to show some difference between the law as regards servants, and the law as regards strangers?—I cannot help thinking, with great respect, that it is equally fair for me to put it the other way, as I have already put it, that in every case where a deviation is made from the principle that the person who does the injury shall be responsible, some grave reason shall be shown for deviating from it, and I am unable to see the grave reason which requires that an alteration and extension of it should be made now.

1105. In other words, you think that the proper course would be to assimilate the whole of the law to the present law with regard to servants; we must treat people equally, and unless you can show some difference between the two cases, ought not they to be ruled by the same principle?—Then I must fall back upon this: that I do not see the justice of the law as it at present stands. It works out most curiously in the case of, say, the trade in which I am engaged. A bricklayer drops a brick (the illustration that has been given) on the head of a man outside, and injures him: we will say A. is the person who is injured, being one of the public; B. is the man who commits the injury, and the employer is C. A. has had his injury, that poor fellow cannot be got rid of, but he is to receive compensation from C., who had nothing to do at all with it. It is quite certain that he had nothing to do with it beyond being the employer of B. A. receives the injury, and C. has an injury done to him, inasmuch as he is mulcted in a certain amount of money for an injury with which he had nothing to do, and the only person who goes scot free is B., the person who did the injury, and that certainly seems to me to be an injustice.

1106. You object in general to the law of negligence in point of practice, you think it really unnecessary?—I should not like to commit myself to saying that there are no cases in which it may not be right that a person should be vicariously responsible; I only fail to see that in what is asked now there is any necessity for it.

1107. You do not see any distinction between the two cases, which should make it right in the one and wrong in the other?—Logically, I do not.

1108. Supposing the law was altered in the sense which is asked, do you see any inconveniences which you would like to state to the Committee?—I think there are sufficiently obvious inconveniences that we should suffer from by being made responsible for all the accidents which occur in what is necessarily a dangerous business. I see the possibility of some practical inconvenience in making us liable for our foreman (I am speaking now specially of the business in which I am engaged), because there are various ways of carrying on works, and a foreman is, to a certain extent, a protection to the workmen. He is an over-looker put there to see that things are carried out in a proper manner, but both with small builders and in the case of large builders in small



*Chairman*—continued.

works very frequently no foreman is employed, and I think that to make us responsible for our foreman would tend to prevent our putting foremen who are a protection to the workmen on works where at present we put them; I think that would be the natural tendency if the law were altered in the way suggested.

1109. Then you would say that we should not report in favour of the first part of the reference to us with regard to making the master liable for his foreman?—That is my view.

1110. With regard to the second part, namely, common employment, what have you to say?—I should imagine that the argument which I have already used covers the question of common employment, that ———

1111. It would be all common employment, in fact?—Yes, it would be all common employment; the foreman and the workmen would be in common employment.

1112. Is there any other point which you wish to bring to the notice of the Committee?—No, I am not aware of any other.

Mr. *Tennant.*

1113. Are you aware that at present the workman that causes the injury is, in point of fact, liable?—He is, of course, criminally liable; but to say that he is civilly liable may be correct in terms, but practically, of course, it is of no effect.

1114. Surely there are some workmen in the position of foremen, and some who are not even in the position of foremen, who have saved some money?—I beg the honourable Member's pardon, I was looking at it in the case of the workmen. In the position of foremen there are clearly many superintendents who are in a very much better position than many employers.

1115. Are you aware now that the foreman would be liable if he were the cause of injury?—That is a legal question; I should assume that he would be.

1116. I believe we have had it stated as a fact that he is; but then assuming that the law of general liability is to stand, would you make any alteration as regards making the person who actually causes the injury primarily liable before you attack any remoter person, such as the master or the agent?—As I understand it, any person who has committed the injury, whatever his position may be, is liable to the extent of his means; I assume that that is so.

1117. Only you mentioned that he escaped scot free, whereas, in point of fact, he is liable?—Yes; I was speaking of workmen.

1118. You surely do not think, if there were any alteration in the law, making a master responsible for the acts of his foreman, that it would have a tendency for the masters to employ less foremen, and, in fact, think greater negligence would be exercised in carrying on his employment?—I do not wish to push it too far; I say that naturally, speaking of our own business, there are certain works where we should increase our responsibility by putting foremen if you extended the liability; at present even it is a question with us sometimes whether the work is of sufficient importance to require one.

1119. Supposing the law were not extended so as to make the master liable for the acts of the foremen, do you think it is fair that the master should be made responsible for the acts of his im-

Mr. *Hannen.*

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Mr. *Tennant*—continued.

mediate agent, supposing he himself never comes near the works at all, but employs an agent to whom he trusts the entire control and superintendence, or do you think in such a case as that the master should be absolved from liability, because he does not attend to the work himself, but delegates this power to another person?—If he delegated his powers to an improper person he is liable now; if he has delegated them to a proper person, I cannot see why he should be liable.

1120. As the law now stands, the master, if he himself controlled or superintended the work, would be held responsible?—Yes.

1121. Do you think that he should be rendered not responsible, because he does not take that duty upon himself, but delegates it to a competent person?—The responsibility in either case is with the man who does the injury. If the master is superintending it himself, and neglects anything that he should do, he is liable, and if the superintendent neglects anything that he should do, he should be liable.

1122. You have just told us that he is now liable, but would you make the master responsible for the acts of his superintendent?—No.

*Mr. Cawley.*

1123. Just following out that argument a little, do you carry your view of the agent to its fullest extent. Take this case, supposing you sent your agent (and a foreman is really acting as agent) into the market, and that he sells a quantity of timber on your behalf, that you refuse to deliver it, who should be liable for the non-fulfilment of the contract entered into by your agent?—In law I am liable, I believe.

1124. I say who should be, not who is; are you to be liable or the agent?—If the agent sells for me something which I refuse to deliver, I am under the difficulty in arguing the question of knowing that the agent is not liable under the law.

1125. Pardon me, I want to know your view of what the law ought to be, because that is what we are inquiring into; you have given your view as a general thing. Now I put it in another form; I want to know in the case of that contract which he has entered into on your behalf, if you fail to deliver it, whether it is the agent or you who ought to be liable for the non-fulfilment?—I must be liable.

1126. Where is the distinction between a man who acts as your agent in directing work to be carried out, and the man who acts as your agent in selling your goods after they are made?—There is a difficulty in defining the distinction probably. I do not see the distinction, although I see very strongly the reason why, in my own case at any rate, I should not be made liable.

1127. Will you just state the reasons why in the one case you should be liable, and in the other case you should not?—I have not considered the agency question with regard to buying and selling, therefore I have some difficulty at once in seeing where the distinction is, or the principle on which the two are founded.

1128. You stated, did you not, that you thought that the extension of the liability would discourage the employment of foremen on small buildings?—I think it would to some extent.

1129. Is it the practice when you do not put a man on a small job, who is termed a foreman, to leave each man to do as he likes, or is one man the head man?—Certainly, there would be men employed of different trades, and one man in each trade would look after his own work, but he would be a workman, and he would be doing work.

Mr. *Cawley*—continued.

1130. He may be doing work, but notwithstanding he is doing work he is looking after the other men, and acting as your agent, is he not?—Yes, in most cases if it is a work of any size at all, he would have other men that he would be looking after in his own particular trade.

1131. And therefore representing you in that matter?—Yes, you may say so; but there would be extreme difficulty in carrying that out, and defining, I should say, in point of law, a foreman, if a man in that capacity is to be called a foreman, as they would be so numerous.

1132. No doubt there may be a difficulty when you come to the delegation of authority, but still there is some one who has instructions given to him, and his duty is to see them carried out; is not that so?—Yes.

1133. And to that extent, at all events, he is acting as agent?—Yes.

1134. But your view is that whether he carries out the instructions or not the master ought not to be liable?—If he is carrying out the direct instructions from the master, and those direct instructions have in any way contributed to the accident, then the master must be responsible.

1135. If the direct instructions are carried out and an accident occurs, then you say the master should be liable?—Yes, and I understand he is.

1136. But if he omits to carry them out and an accident occurs, then you think that the master ought not to be liable?—No, he ought not.

Mr. *Macdonald.*

1137. You are opposed to any alteration in the law, as I understand?—Yes, in the direction of increasing the responsibility of the employer.

1138. Are you responsible, civilly, in other matters for your manager; if your manager purchased a quantity of bricks for you, or purchases a quantity of timber, are you legally responsible for his acts in such a case as that?—That is the same question that the honourable Member for Salford put. What I stated with regard to that was that undoubtedly we are responsible, that is to say, I shall have to pay for bricks that I desire my agent to buy, but if you ask me as the honourable Member did to point out the distinction between that and any other Act, I am not prepared to do so.

1139. But suppose you did not order him to buy the bricks, but as general manager to you, if he bought bricks whether you ordered him or not, would you be responsible?—That seems to me to be a legal question as to how far I am responsible; generally I should say I am responsible.

1140. Will you tell me why you wish to draw a distinction between your responsibility if the manager acts in one way and not in another?—For the same reason that in the Bill which you introduced, I think it was generally considered that to carry it to its extreme limits and make every one responsible for the acts of any person in their employ was carrying it too far; and in the same way in asking us to make ourselves responsible for the acts of our foreman with regard to accidents, that is going beyond the

Mr. *Macdonald*—continued.

the limits which I think it is fair to impose upon us.

1141. Did the Bill contemplate such a thing as that, do you think?—In terms it stated it.

1142. Were there not provisions in it which entirely disprove that idea?—Not that I am aware of.

1143. Then you are not prepared to tell us why it is that you would not hold a manager responsible in relation to the workman whilst he is bound to the outside public?—I am not prepared to say where any particular line is to be drawn as to the responsibility for those acts; all I say is that the line that is at present drawn by the law appears to me to be certainly sufficiently elastic, and if you were to draw it further, I think you would be creating great injustice, whilst I myself think that injustices are already committed by the law as it at present stands.

1144. In what sense do you see injustice, because there are two senses in which that may be regarded?—In the sense that I am made to be responsible for an act over which I have no control, and which it is admitted I have nothing to do with, and that seems to me unjust.

1145. Is it the law now that you are made responsible for things over which you have no control?—Yes, to the public.

1146. Not to your workmen?—No.

1147. You said that if the law was altered, the result would be that you would not employ a foreman at all; if a foreman were not employed, on whom would the responsibility then directly fall?—As I said, I consider that there was a tendency that way, but I think you will find that I said I did not wish to push it too far. There might be a tendency that way; it would only be to a small extent. No doubt the responsibility if I gave directions myself, would be upon me; if I gave my instructions directly to the workmen without employing a foreman, and I did any act which any way contributed to an accident, I should be directly liable myself.

1148. If there was no intermediary would you not be held liable?—Yes, because I must have given instructions myself.

1149. So that ceasing to employ a foreman would increase the responsibility of the employer?—Yes, in some cases it would.

1150. Would it not in all cases?—No, because we have general managers, of course, to whom we give general instructions, and who would overlook a great many small things probably, and as it at present stands I imagine that I should not be liable for their acts, supposing they were competent people.

1151. You were asked what the law is at the present moment, will you again define what you think the law ought to be?—To put it practically, not being a lawyer, that if 12 impartial persons can be persuaded that I in any way contributed to the accident, then I should be liable, and that, therefore, any extension of it, as I put it, means that I am to be liable for an act which no 12 persons can be brought to say I had anything to do with.

1152. An employer, if he directs, if he orders, if he superintends at the present moment his work, is he liable?—If he superintends it himself he is.

1153. Can you give me any reason why, when he delegates it to another, he should not be liable?—For the same reason that I gave before,



Mr. *Macdonald*—continued.

that the person who should be responsible is the person who commits the injury, and if I no longer take any part in carrying out a work I have not in any way contributed to the injury. If I employ an incompetent person, I am liable now, and if I employ a competent person I do not see why I should be made liable for his acts, he being a competent person to whom I have delegated that authority. The mere delegation of that authority does not seem to me in any way to make me liable, if I have delegated that authority properly.

1154. For whose benefit do you open a work or carry on a business?—For my own.

1155. When you manage, yourself, you are responsible for your acts in virtue of opening that work for your own benefit?—I do not see that its being for my benefit has anything to do with it any more than its being for the benefit of the workmen who takes the wages; he is doing work equally to benefit himself. You might equally as well say that he ought, therefore, on that ground to take the responsibility, but in any argument, I fail to see, because I am going to make a profit out of it, that I should be held responsible for things that I have nothing to do with.

1156. Then you would take the profit and take no responsibily whatever?—No, I take very heavy responsibilities.

1157. What are they?—I have explained that if in any way it can be shown that I have done anything or neglected to do anything that personally I ought to have done, I am responsible. That is a very heavy responsibility; it is a perfectly fair one, but it is a heavy one.

1158. I take it that you look upon the law as proper at the present moment?—Yes, I look upon it certainly as having no desire to change it.

Sir *Daniel Gooch.*

1159. Is all work profitable?—No.

1160. If the work is not profitable, I presume the men do not in any way share the loss with you?—No.

1161. Therefore if there is a profit beyond the interest of the capital, the master or anybody is entitled to it in consideration of the risk he takes of making a loss?—Yes.

1162. A great portion of your work is by contract, is it not?—Yes.

1163. You enter into a contract, and if a large work, for a certain sum; your estimate may overestimate or under-estimate it; you may make a heavy loss or a considerable profit, and therefore your profit depends on the risk that you take on both sides; if your speculation is successful you will get the benefit of the profit and the workman has his profit out of it, but on the other hand, if you make a loss, the workman shares none of that loss?—No.

1164. But he has his profit out of it in any case?—Yes.

1165. Assuming that the law was altered to make the master responsible for the man who acts as manager, it is difficult to tell which is the man and which is the foreman; do you see any way of drawing the line so as to define legally which is the foreman and which is the manager?—No; there seem to me to be great difficulties in that respect.

1166. A man may have charge, may he not, of

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Sir *Daniel Gooch*—continued.

three or four works as overlooker, having the responsibility of the thing?—Yes.

1167. Would it be possible to call that man a foreman?—You might call him a foreman, of course, but it would be difficult in a great many cases to distinguish a workman from a foreman.

1168. Therefore if a law is made to make a master responsible for the foreman, it would be necessary for the master to be very careful how he designated those people; he would be trying to evade the responsibility in every way by limiting the responsibility of the overlookers under chief manager?—I do not think there would practically be much evasion of it in that way; if the work is sufficiently extensive of course it would require a foreman, and he would be put on, because it is the interest of the master as well as of the men to do so.

1169. Of course a large portion of your work, I apprehend, is not of an extensive character; I mean that there is a great quantity of work done in London and in towns everywhere where you employ three or four men, perhaps, two or three bricklayers, and so on, but you have not a large establishment of each class sufficient to warrant a foreman being put on?—No.

1170. Therefore there would be a difficulty, would there not, in defining whether a man who was responsible to you over the other men was a foreman, or not a foreman?—I think there would be a great difficulty to distinguish between him and an ordinary workman, as to whether he might be called a foreman, because to some extent he superintends the work.

Mr. *Eustace Smith.*

1171. You have been asked some questions with regard to agency, but I suppose you are aware that an agent is not empowered to pledge your credit beyond the extent to which you have, either directly or tacitly, delegated authority to him?—I should imagine not.

1172. For instance, you send a man into a market to buy timber at 5 *l.* a load, and he buys timber at 10 *l.*; or you send him to sell timber at 5 *l.* a load, and he sells it at 2 *l.*; he is acting entirely outside his instructions, and you can at once repudiate the contract, can you not?—I should imagine so, and I certainly ought to be able to do so.

1173. Unless he was a general agent empowered generally to buy goods for you, and to act entirely upon his own responsibility generally with regard to the purchase and sale of goods, I think it is pretty well known that you would be able to repudiate any such outrageous contract if he entered into it?—I should think so.

1174. Then I suppose your view would be that in the same way, if you gave specific directions to your foreman or overlooker that the work was to be carried on in a certain manner, and if he violated those instructions, and carried on the work in a totally different manner, it is rather hard upon you, in your opinion, that you should be rendered liable for the consequences of the violation of your instructions on the part of your overlooker?—I think so.

1175. Because it is well to understand that agency can be carried to an extravagant extent?—Certainly.

1176. With regard to this possible limitation of foreman, I think I understand you not to carry the argument quite so far as you were pressed in

Mr. *Eustace Smith*—continued.

examination; you only thought that in a doubtful case, that as to employing a foreman or not, the fact of delegating the authority and incurring responsibility might sometimes turn the scale as to whether the employer should have so large a staff of superintendents as he otherwise would have?—Yes; I do not, as I stated at the beginning, attach much importance to that; I say it appears to me that there would be a tendency to restrict the superintendence if it were found that it involved considerable responsibility.

1177. Have you ever taken any interest in electioneering matters?—No, not much.

1178. But, perhaps, you are sufficiently acquainted with them to know that a candidate is responsible for the acts of his recognised agents, and that a prudent candidate generally endeavours to keep the number of his recognised agents as small as possible on account of the amount of responsibility in which he may involve himself; I suppose your idea would be that an employer of labour would be in very much the same position, and would rather, in a doubtful case, have three foremen than five foremen, for whose acts he would be responsible?—Yes, if it were clear that it would increase his responsibility. There are cases, as pointed out by the honourable Member for Stafford, where his responsibility would be increased, no doubt, by not employing them, and in that case, of course, he would employ them; but where his responsibility would be increased, and it did not appear to be necessary to employ them, he would leave them out.

Mr. *Knowles.*

1179. Do you think it would be practicable for a large builder to carry on his trade without foremen?—No; certainly not, not without a great many foremen.

1180. Witnesses have been asked whether the masters do not take the profits; I suppose when you estimate for a job you put on a certain per cent. for profits?—Yes, what we hope will be profit.

1181. Have you ever known an anticipated profit turn to a loss by the act of the workmen?—Yes, very frequently.

1182. Have you found cases sometimes that as soon as you have made a contract, and the workmen have found out that you were fast, they have wanted higher wages, or have done something so that your anticipated profit has turned out a loss?—We certainly make contracts by which we lose very frequently.

1183. The men never complain about that, they do not tell you that; as they pocket the profits they will relieve you of the responsibility to them?—No.

Mr. *Stanhope.*

1184. What is your practice with respect to the erection of scaffolding?—We employ special men who are paid extra wages for doing that work.

1185. Are they under a foreman?—They are under a general foreman who superintends that part of the building; I should say that of course we have overlookers whose business it is to see that all the scaffolding that is sent out to a work is in a sound condition, and then imagine if they neglect that due precaution we should personally render ourselves liable for an accident if it occurred.

1186. In fact, you hold that your liability in respect

Mr. *Stanhope*—continued.

respect to sufficient scaffolding is direct?—I hold that we are bound to take all reasonable precaution to see that the system under which we work is one which ensures safety as far as it can be ensured.

1187. Do you consider that an ordinary bricklayer or mason would in the course of learning his trade be able as a general rule to know whether a scaffolding was sufficient or not?—I think so, certainly.

1188. And if he thought it insufficient, and the men in your employ thought it insufficient or defective in any particular, would you expect him to point out that circumstance to the foreman, or to make some proper complaint on the subject?—It is a matter that frequently does occur, that the workmen point out anything that they consider is unsafe.

Mr. *Stanhope*—continued.

1189. It has been stated to this Committee that it is no part of the business of workmen to do so; that they could have no knowledge whatever as to the sufficiency of the scaffolding; that it is not their business to put up scaffolding; your opinion is that their knowledge is sufficient to enable them to judge whether the work is secure or not, and if it was insecure they would complain?—I think certainly a mason or a bricklayer has quite sufficent knowledge of his own as to whether a scaffolding or tackle is in good condition, and if he saw that it was not so, he would be sure, and does occasionally point it out.

Mr. *Hannen.*

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# I N D E X.

[*N.B.*—In this Index the *Figures* following the Names of the Witnesses refer to the Questions in the Evidence].

## A.

*ACCIDENTS.* Conclusion that the proposed extension of the liability of employers for injuries to their workmen would result in an increased prevention of accidents, *Howell* 197. 201, 202. 212——Belief as to the bulk of accidents in mines arising from carelessness or breach of rules; data for this impression, *Brown* 571, 572. 581–585——Very few serious accidents compared with the number of men employed, *Broadhurst* 859, 878, 879——Decided diminution of accidents by increased liability of employers, *ib.* 914–918. ——*See* also *Carelessness. Mines. Railways. Scaffolding.*

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